

RECORDATION NO. 21124 FILED

DEC 31 '97

10-20AM

ALVORD AND ALVORD

ATTORNEYS AT LAW

918 SIXTEENTH STREET, N.W.

SUITE 200

WASHINGTON, D.C.

20006-2973

(202) 393-2266

FAX (202) 393-2156

RECORDATION NO. 21124 FILED

DEC 31 '97

10-20AM

OFF COUNSEL
URBAN A. LESTER

DEC 31 10 16 AM '97

RECEIVED
SURFACE TRANSPORTATION
BOARD

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

December 30, 1997

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Re: Amtrak Trust 97-D

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Memorandum of Lease of Railroad Equipment (Amtrak Trust 97-D), dated as of December 30, 1997, a primary document as defined in the Board's Rules for the Recordation of Documents, and the following secondary documents related thereto: a Trust Indenture and Security Agreement (Amtrak Trust 97-D), dated as of December 1, 1997, and Trust Agreement and Indenture Supplement No. 1 (Amtrak Trust 97-D), dated December 30, 1997.

The names and addresses of the parties of the enclosed documents are:

Memorandum of Lease of Railroad Equipment

Lessor: State Street Bank and Trust Company
of Connecticut, National Association
225 Asylum Street

Lessee: National Railroad Passenger Corporation
400 North Capitol Street, N.W.
Washington, D.C. 20001

Mr. Vernon A. Williams
December 30, 1997
Page 2

Trust Indenture and Security Agreement
Trust Agreement and Indenture Supplement No. 1

Owner Trustee: State Street Bank and Trust Company
of Connecticut, National Association
225 Asylum Street
Hartford, Connecticut 06103
Hartford, Connecticut 06103

Indenture Trustee: The First National Bank of Maryland
25 South Charles Street
Baltimore, Maryland 21202

A description of the railroad equipment covered by the enclosed documents is:

Fifty (50) railcars bearing AMTK reporting marks and road numbers
~~23004~~ through ~~23050~~, inclusive
62000 62049

Also enclosed is a check in the amount of \$72.00 payable to the order of the
Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed documents to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/bg
Enclosures

RECORDATION NO. 21124-A

FILED

DEC 31 '97

10-20 AM

TRUST INDENTURE AND SECURITY AGREEMENT

(Amtrak Trust 97-D)

Dated as of
December 1, 1997

BETWEEN

**STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT,
NATIONAL ASSOCIATION,**
Owner Trustee

AND

THE FIRST NATIONAL BANK OF MARYLAND,
Indenture Trustee

Fifty (50) Amrail Viewliner Passenger Cars

A Redacted Version of the Trust Indenture and Security Agreement and Indenture Supplement No. 1 have been filed with the Surface Transportation Board pursuant to 49 U.S.C. §11301 on December ____, 1997 at __:__.m. Recordation Number _____, and deposited in the office of the Registrar General of Canada pursuant to the Canada Transportation Act on December ____, 1997 at __:__.m.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	DEFINITIONS.....5
SECTION 1.01.	Special Definition5
SECTION 1.02.	Reference to Other Documents.....10
ARTICLE II	THE SECURED NOTES.....10
SECTION 2.01.	Form of Secured Notes10
SECTION 2.02.	Terms of Secured Notes.....11
SECTION 2.03.	Limitations on Prepayments; Indemnities; Currency11
SECTION 2.04.	Taxes; Withholding.....12
SECTION 2.05.	Payments from Trust Indenture Estate Only.....13
SECTION 2.06.	Method of Payment.....13
SECTION 2.07.	Application of Payments.....14
SECTION 2.08.	Termination of Interest in Trust Indenture Estate.....14
SECTION 2.09.	Registration, Transfer and Exchange of Secured Notes.....14
SECTION 2.10.	Mutilated, Destroyed, Lost or Stolen Secured Notes.....15
SECTION 2.11.	Payment of Expenses on Transfer.....16
SECTION 2.12.	Optional Prepayment16
SECTION 2.13.	Purchase Upon Event of Default.....16
SECTION 2.14.	Mandatory Prepayment.....17
SECTION 2.15.	Secured Notes in Respect of Replacement Equipment.....18
SECTION 2.16.	Assumption of Secured Notes by the Lessee19
SECTION 2.17.	Reamortization21
SECTION 2.18.	Amortization Schedules.....22
ARTICLE III	RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME FROM THE TRUST ESTATE.....23
SECTION 3.01.	Certain Rent Distributions23
SECTION 3.02.	Casualty Occurrence and Replacement; Lease Termination; Refinancing24
SECTION 3.03.	Payment After Event of Default, etc.,25
SECTION 3.04.	Certain Payments27
SECTION 3.05.	Other Payments.....27
SECTION 3.06.	Payments to Owner Trustee28
SECTION 3.07.	Investment of Amounts Held by Indenture Trustee.....28
SECTION 3.08.	Distribution of Excluded Payments29

TABLE OF CONTENTS

(continued)

	<u>Page</u>
ARTICLE IV	
COVENANTS OF OWNER TRUSTEE; EVENTS OF DEFAULT; REMEDIES OF INDENTURE TRUSTEE.....	29
SECTION 4.01. Covenants of Owner Trustee.....	29
SECTION 4.02. Event of Default.....	30
SECTION 4.03. Certain Rights	32
SECTION 4.04. Remedies.....	33
SECTION 4.05. Return of Equipment, etc.	35
SECTION 4.06. Remedies Cumulative.....	36
SECTION 4.07. Discontinuance of Proceedings.....	37
SECTION 4.08. Waiver of Past Defaults	37
ARTICLE V	
DUTIES OF THE INDENTURE TRUSTEE.....	37
SECTION 5.01. (a) Notice of Event of Default.....	37
(b) Other Notices	38
SECTION 5.02. Action Upon Instructions.....	38
SECTION 5.03. Indemnification	39
SECTION 5.04. No Duties Except as Specified in Indenture or Instructions.....	39
SECTION 5.05. No Action Except Under Lease, Indenture or Instructions.....	40
SECTION 5.06. Replacement Unit(s)	40
SECTION 5.07. Effect of Replacement.....	40
SECTION 5.08. Notices; etc.....	40
ARTICLE VI	
THE OWNER TRUSTEE AND THE INDENTURE TRUSTEE.....	41
SECTION 6.01. Acceptance of Trusts and Duties	41
SECTION 6.02. Absence of Duties	41
SECTION 6.03. No Representations or Warranties as to Equipment or Documents	41
SECTION 6.04. No Segregation of Moneys; No Interest	42
SECTION 6.05. Reliance; Agents; Advice of Counsel	42
SECTION 6.06. Capacity in Which Acting.....	43
SECTION 6.07. Compensation	43
SECTION 6.08. May Become Note Holder	43
SECTION 6.09. Further Assurances; Financing Statements.....	43
SECTION 6.10. Certain Rights of Owner Trustee, Owner Participant and Indenture Trustee	43

TABLE OF CONTENTS

(continued)

	<u>Page</u>
ARTICLE VII	INDEMNIFICATION OF INDENTURE TRUSTEE BY OWNER TRUSTEE45
SECTION 7.01.	Scope of Indemnification45
ARTICLE VIII	SUCCESSOR TRUSTEES AND SEPARATE TRUSTEES.....46
SECTION 8.01.	Notice of Successor Owner Trustee46
SECTION 8.02.	Resignation of Indenture Trustee; Appointment of Successor.....46
SECTION 8.03.	Appointment of Additional and Separate Trustees47
ARTICLE IX	SUPPLEMENTS AND AMENDMENTS TO THIS INDENTURE AND OTHER DOCUMENTS.....48
SECTION 9.01.	Instructions of Majority; Limitations.....48
SECTION 9.02.	Trustees Protected50
SECTION 9.03.	Documents Mailed to Holders50
SECTION 9.04.	No Request Necessary for Lease Supplements, Indenture Supplement, etc.....50
ARTICLE X	MISCELLANEOUS51
SECTION 10.01.	Termination of Indenture51
SECTION 10.02.	No Legal Title to Trust Indenture Estate in Holders.....51
SECTION 10.03.	Sale of Equipment by Indenture Trustee is Binding51
SECTION 10.04.	Indenture for Benefit of Owner Trustee, Indenture Trustee, Owner Participant and Note Holders52
SECTION 10.05.	No Action Contrary to Lessee's Rights Under the Lease.....52
SECTION 10.06.	Notices52
SECTION 10.07.	Severability52
SECTION 10.08.	No Oral Modifications or Continuing Waivers52
SECTION 10.09.	Successors and Assigns.....53
SECTION 10.10.	Headings53
SECTION 10.11.	Normal Commercial Relations53
SECTION 10.12.	Governing Law; Counterpart Form53
Schedule I	Amortization Schedule
Exhibit A	Form of Trust Agreement and Indenture Supplement
Exhibit B	Form of Tax Certificate
Exhibit C	Form of Secured Note

TRUST INDENTURE AND SECURITY AGREEMENT
(Amtrak Trust 97-D)

TRUST INDENTURE AND SECURITY AGREEMENT (Amtrak Trust 97-D) dated as of December 1, 1997 between STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity, except as otherwise specifically set forth herein, but solely as owner trustee under the Trust Agreement referred to below (together with any successor owner trustee, the "Owner Trustee"), and THE FIRST NATIONAL BANK OF MARYLAND, a national banking association organized under the laws of the United States, as indenture trustee hereunder (together with any successor indenture trustee, the "Indenture Trustee").

WHEREAS, all capitalized terms used herein shall have the respective meanings set forth or referred to in Article I hereof;

WHEREAS, the Owner Participant and State Street Bank and Trust Company of Connecticut, National Association have, immediately prior to the execution and delivery of this Indenture, entered into a Trust Agreement (Amtrak Trust 97-D) dated as of the date hereof (as amended or otherwise modified from time to time in accordance with the provisions thereof and of the Participation Agreement, the "Trust Agreement"), whereby, among other things, State Street Bank and Trust Company of Connecticut, National Association has declared a certain trust for the use and benefit of the Owner Participant, subject, however, to the Lien of this Indenture, and the Owner Trustee is authorized and directed to execute and deliver this Indenture;

WHEREAS, the Owner Trustee desires by this Indenture, among other things (i) to provide for the issuance by the Owner Trustee to the Loan Participants of Secured Notes evidencing the repayment obligations of the Owner Trustee to each Loan Participant in respect of the amounts borrowed from such Loan Participant on the Closing Date and used for the payment of Equipment Cost for the Equipment, all as provided in the Participation Agreement, and (ii) to provide for the assignment, mortgage and pledge by the Owner Trustee to the Indenture Trustee, as part of the Trust Indenture Estate hereunder, among other things, of certain of the Owner Trustee's estate, right, title and interest in and to the Equipment and the Indenture Documents and all payments and other amounts received hereunder or thereunder in accordance with the terms hereof, as security for, among other things, the Owner Trustee's obligations to the Loan Participants and the Note Holders and for the benefit and security of the Loan Participants and such holders;

WHEREAS, all things have been done to make the Secured Notes, when executed by the Owner Trustee and authenticated, issued and delivered hereunder, the legal, valid and binding obligations of the Owner Trustee, enforceable against Owner Trustee in accordance with the terms thereof; and

WHEREAS, all things necessary to make this Indenture the legal, valid and binding obligation of the Owner Trustee, for the uses and purposes herein set forth, enforceable in accordance with its terms, have been done and performed and have happened;

GRANTING CLAUSE

NOW, THEREFORE, THIS TRUST INDENTURE AND SECURITY AGREEMENT WITNESSETH that, to secure the prompt payment of the principal of, Breakage Amount, if any, and interest on, and all other amounts due with respect to, all Secured Notes from time to time outstanding hereunder and the performance and observance by the Owner Trustee of all the agreements, covenants and provisions herein, in the Participation Agreement and the other Operative Documents for the benefit of the Note Holders and the Loan Participants and in the Secured Notes contained, and the prompt payment of all amounts from time to time owing under the Participation Agreement and the other Operative Documents by the Owner Trustee and the Lessee or the Owner Participant for the benefit of the holders of the Secured Notes, in each case to the Loan Participants and/or the Note Holders, and for the uses and purposes and subject to the terms and provisions hereof, and in consideration of the premises and of the covenants herein contained, and of the acceptance of the Secured Notes by the holders thereof, and of the sum of \$1 paid to the Owner Trustee by the Indenture Trustee at or before the delivery hereof, the receipt whereof is hereby acknowledged, the Owner Trustee has granted, bargained, sold, assigned, transferred, conveyed, mortgaged, pledged and confirmed, and does hereby grant, bargain, sell, assign, transfer, convey, mortgage, pledge and confirm, unto the Indenture Trustee, its successors and assigns, for the security and benefit of the Loan Participants and the Note Holders from time to time, a security interest in and mortgage Lien on all estate, right, title and interest and all the powers and privileges of the Owner Trustee in, to and under the following described property, rights, interests and privileges whether tangible or intangible, wherever located or situated, whether now owned or held or hereafter acquired, other than Excluded Payments (which collectively, excluding Excluded Payments but otherwise including all property hereafter specifically subjected to the Lien of this Indenture by the Trust Agreement and Indenture Supplements or any mortgage supplemental hereto, are included within the Trust Indenture Estate), to wit:

(1) the Equipment and all replacements thereof and substitutions therefor in which the Owner Trustee shall from time to time acquire an interest as provided herein and in the Lease, all as more particularly described in the Trust Agreement and Indenture Supplements executed and delivered with respect to the Equipment or any such replacements or substitutions therefor, as provided in this Indenture, and all records, logs and other documents at any time maintained with respect to the foregoing property;

(2) the Lease and all Rent thereunder, including, without limitation, all amounts of Base Rent, Supplemental Rent, and payments of any kind thereunder or in respect thereof, the Participation Agreement and the Bill of Sale, including without limitation, in the case of each such Operative Document, (x) all amounts or other payments of any kind paid or payable by the obligor(s) thereunder or in respect thereof to the Owner Trustee whether in its capacity as Lessor or otherwise as well as all rights of the Owner Trustee to enforce payment of any such amounts or payments, (y) all rights, power and privileges of the Owner Trustee thereunder or in respect thereof, including its right to exercise any election or option or to make any decision or determination or to give or receive any notice, consent, waiver or approval or to take any other action under or in respect of any such document or to accept surrender or redelivery of the

Equipment or any part thereof, as well as all the rights, powers and remedies on the part of the Owner Trustee, whether acting under any such document or by statute or at law or in equity, or otherwise, arising out of any Lease Event of Default or otherwise, and (z) any right to restitution from the Lessee in respect of any determination of invalidity of any such document;

(3) all rents, issues, profits, revenues and other income or proceeds of the property subjected or required to be subjected to the Lien of this Indenture;

(4) all insurance and requisition proceeds with respect to the Equipment or any part thereof including but not limited to the insurance required under Section 8 of the Lease;

(5) all moneys, securities and other property now or hereafter paid or deposited or required to be paid or deposited to or with the Indenture Trustee by or for the account of the Owner Trustee pursuant to any term of any Operative Document and held or required to be held by the Indenture Trustee hereunder; and

(6) all proceeds of the foregoing;

BUT EXCLUDING from the foregoing and from the Trust Indenture Estate all Excluded Payments and Excluded Rights, and the rights to enforce and collect the same, and SUBJECT TO the rights of the Owner Trustee and the Owner Participant under Section 6.10 hereof.

Concurrently with the delivery hereof, the Owner Trustee is delivering to the Indenture Trustee the executed counterpart of the Lease (including each Lease Supplement delivered on the Closing Date) identified for Uniform Commercial Code purposes as the sole chattel paper original of the Lease (to which a chattel paper receipt is attached), together with executed copies of the Indenture Documents (other than the Bill of Sale).

HABENDUM CLAUSE

TO HAVE AND TO HOLD all and singular the aforesaid property unto the Indenture Trustee, its successors and assigns, in trust for the benefit and security of the Loan Participants and the Note Holders from time to time, without any priority of any one Secured Note over any other, and for the uses and purposes and subject to the terms and provisions set forth in this Indenture.

It is expressly agreed that anything herein contained to the contrary notwithstanding, the Owner Trustee shall remain liable under the Indenture Documents to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and the Indenture Trustee, the Loan Participants and the Note Holders shall have no obligation or liability under any thereof by reason of or arising out of the assignment hereunder, nor shall the Indenture Trustee, the Loan Participants or the Note Holders be required or obligated in any manner to perform or fulfill any obligations of the Owner Trustee under or pursuant to any of the Indenture Documents, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of

any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Owner Trustee does hereby constitute the Indenture Trustee the true and lawful attorney of the Owner Trustee, irrevocably, with full power (in the name of the Owner Trustee or otherwise) to ask, require, demand and receive any and all moneys and claims for moneys (in each case including insurance and requisition proceeds but excluding Excluded Payments) due and to become due under or arising out of the Indenture Documents and all other property which now or hereafter constitutes part of the Trust Indenture Estate, to endorse any checks or other instruments or orders in connection therewith and to file any claims or to take any action or to institute any proceedings which the Indenture Trustee may deem to be necessary or advisable in the premises including, without limitation, the express power to execute and deliver a bill of sale conveying title to the Equipment to the Indenture Trustee on and subject to the terms and conditions of Article IV of this Indenture. Under the Lease, the Lessee is directed to make all payments of Rent (other than Excluded Payments) and all other amounts which are required to be paid to or deposited with the Owner Trustee pursuant to the Lease (other than Excluded Payments) directly to the Indenture Trustee at such address or addresses as the Indenture Trustee shall specify, for application as provided in this Indenture. Further, the Owner Trustee agrees that promptly on receipt thereof, it will transfer to the Indenture Trustee any and all monies from time to time received by it constituting part of the Trust Indenture Estate, whether or not expressly referred to in the immediately preceding sentence, but including, without limitation, any thereof constituting a payment under the Lease for distribution by the Indenture Trustee pursuant to this Indenture, except that the Owner Trustee shall accept for distribution pursuant to the Trust Agreement any amounts distributed to it by the Indenture Trustee under this Indenture.

The Owner Trustee agrees that at any time and from time to time, upon the written request of the Indenture Trustee, the Owner Trustee will promptly and duly execute and deliver or cause to be duly executed and delivered any and all such further instruments and documents as the Indenture Trustee may reasonably deem desirable in obtaining the full benefits of the assignment hereunder and of the rights and powers herein granted.

The Owner Trustee does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Indenture shall remain in effect and the Lien hereof shall not have been released pursuant to Section 10.01 hereof, any of its estate, right, title or interest hereby assigned, to anyone other than the Indenture Trustee, and that, with respect to such estate, right, title and interest hereby assigned, it will not, except as provided in this Indenture and except as to Excluded Payments, (i) accept any payment from the Lessee, enter into any agreement amending, modifying or supplementing any of the Indenture Documents, execute any waiver or modification of, or consent under, the terms of any of the Indenture Documents, (ii) settle or compromise any claim (other than those relating to Excluded Payments) arising under any of the Indenture Documents, or (iii) submit or consent to the submission of any dispute, difference or other matter (other than those relating to Excluded Payments) arising under or in respect of any of the Indenture Documents to arbitration thereunder.

The Owner Trustee hereby ratifies and confirms its obligations under the Indenture Documents and does hereby agree that it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of any of the Indenture Documents or of any of the rights created by any thereof or the assignment hereunder.

IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. **Special Definitions.** For all purposes of this Indenture the following terms shall have the following meanings (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

"Applicable Rate" shall mean 7.75% per annum (computed on the basis of a 360-day year of twelve 30-day months).

"Bankruptcy Code" shall mean the United States Bankruptcy Code of 1978, as amended from time to time.

"Breakage Amount" shall mean, with respect to any Secured Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Secured Note over the amount of such Called Principal, *provided* that Breakage Amount may in no event be less than zero.

"Business Day" shall mean any day other than (i) a Saturday or Sunday and (ii) a day on which state, provincial or national banking institutions are authorized or obligated by law or executive order to remain closed in the City of New York, New York, Connecticut, Maryland or the District of Columbia.

"Called Principal" shall mean, with respect to any Secured Note, the principal of such Secured Note that is to be prepaid or has become or is declared to be immediately due and payable, as the context requires.

"Corporate Trust Administration" shall mean the Corporate Trust Administration of Trust Company located at Goodwin Square, 225 Asylum Street, Hartford, Connecticut 06103, Attention: Corporate Trust Administration (Amtrak Trust 97-D), or such other office of the Trust Company at which the trust created by the Trust Agreement shall be administered which the Owner Trustee shall have specified by notice in writing to the Lessee, the Indenture Trustee, the Owner Participant, the Loan Participants and the Note Holders.

"Corporate Trust Office" shall mean the principal office of the Indenture Trustee located at 25 South Charles Street, Mail Code 101-591, Baltimore, Maryland 21201, Attention:

Corporate Trust Department, or such other office at which the Indenture Trustee's corporate trust business shall be administered which the Indenture Trustee shall have specified by notice in writing to the Lessee, the Owner Trustee, the Loan Participants and each Note Holder.

"*Debt*" shall mean any liability for borrowed money, or any liability for the payment of money in connection with any letter of credit transaction, or other liabilities evidenced or to be evidenced by bonds, debentures, notes or other similar instruments.

"*Default*" shall mean an event which with notice or lapse of time or both would become an Event of Default.

"*Discounted Value*" shall mean, with respect to the Called Principal of any Secured Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discounted factor (applied on the same periodic basis as that on which interest on the Secured Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.

"*Dollars*" shall mean the lawful currency of the United States of America.

"*Event of Default*" shall have the meaning specified in Section 4.02 hereof.

"*Excluded Payments*" shall mean (i) indemnity or other payments (and interest thereon to the extent provided in the Operative Documents) paid or payable by the Lessee in respect of the Owner Participant, the Owner Trustee in its individual capacity or any of their respective affiliates, successors, permitted assigns, directors, officers, employees, servants and agents, pursuant to Sections 6.1, 6.2 and 7.3 of the Participation Agreement, (ii) proceeds of any public liability insurance policies (or government indemnities in lieu thereof) in respect of the Equipment payable as a result of insurance claims paid for the benefit of, or losses suffered by, the Owner Trustee or the Indenture Trustee in their respective individual capacities or by the Owner Participant, (iii) proceeds of property insurance maintained with respect to the Equipment for the benefit of the Owner Participant (whether directly or through the Owner Trustee) and not required to be maintained under Section 8 of the Lease, except to the extent that the maintenance thereof reduces the coverage of any amount payable under any insurance required to be maintained under Section 8 of the Lease, (iv) payments of Supplemental Rent by the Lessee in respect of any amounts payable under the Tax Indemnity Agreement, (v) in the event that the Lessee has assumed the obligations of the Owner Trustee pursuant to Section 2.16 of the Indenture, the amount payable by Lessee pursuant to Section 16.1 of the Lease, (vi) fees payable to the Owner Trustee or the Indenture Trustee pursuant to the last sentence of Section 7.2 of the Participation Agreement, (vii) all right, title and interest of Owner Trustee and Owner Participant in and to the Undertaking and Pledge and Security Agreement, any and all collateral thereunder and any payment paid or payable thereunder, (viii) any interest that pursuant to the Operative Documents may from time to time accrue in respect of any of the amounts described in clauses (i) through (vii) above, (ix) any right to exercise any election or option or make any decision or determination, or to give or receive any notice, consent, waiver or approval, or to take any other action in respect of, but in each case only to the extent relating to, any Excluded Payments, (x)

any right to restitution from Lessee in respect of, but only to the extent relating to, any Excluded Payment resulting from a determination of invalidity of such Excluded Payment, (xi) any right to demand, collect or otherwise receive and enforce the payment of any amount described in clauses (i) through (x) above or to enforce the Undertaking and Pledge and Security Agreement and (xii) all proceeds of the foregoing.

"*Excluded Rights*" shall mean the rights of the Owner Participant or the Owner Trustee set forth in Section 6.10 hereof.

"*Indenture*", "*this Indenture*", and "*the Indenture*" shall mean this Trust Indenture and Security Agreement (Amtrak Trust 97-D) as it may from time to time be supplemented or amended as herein provided, including as supplemented by any Trust Agreement and Indenture Supplement pursuant hereto.

"*Indenture Documents*" shall mean the Participation Agreement, the Lease and the Bill of Sale.

"*Indentured Property*" shall mean all property included in the Trust Indenture Estate.

"*Installment Payment Date*" has the meaning set forth in Annex A to the Participation Agreement.

"*Lease*" shall mean the Lease of Railroad Equipment (Amtrak Trust 97-D) dated as of the date hereof, entered into by the Owner Trustee and the Lessee concurrently with the execution and delivery of this Indenture, as said Lease Agreement may from time to time be supplemented or amended, or the terms thereof waived or modified, to the extent permitted by, and in accordance with, the terms of this Indenture. The term "Lease" shall also include each Lease Supplement from time to time entered into pursuant to the terms of the Lease.

"*Lease Default*" shall mean an event which with notice or lapse of time or both would become a Lease Event of Default.

"*Lessee*" shall mean National Railroad Passenger Corporation (also known as Amtrak), a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia.

"*Note Register*" shall have the meaning specified in Section 2.09 hereof.

"*Majority in Interest of Note Holders*" as of a particular day of determination shall mean the holders of at least 66-2/3% in aggregate unpaid principal amount of all Secured Notes outstanding as of such date (excluding any Secured Notes held by the Owner Trustee or the Owner Participant or any interests of the Owner Participant therein by reason of subrogation pursuant to Section 4.03 hereof (unless all Secured Notes then outstanding shall be held by the Owner Trustee or the Owner Participant) or the Lessee or any Affiliate of any thereof).

"*Non-U.S. Person*" has the meaning set forth in Annex A to the Participation Agreement.

"*Note Holder*" shall mean any holder from time to time of one or more Secured Notes.

"*Overdue Rate*" shall mean, with respect to any obligation on, under or in respect of any Secured Note, a rate of interest per annum equal to the lesser of (a) the Applicable Rate plus 2% and (b) the highest rate of interest permitted by applicable law.

"*Owner Participant*" shall mean General Electric Capital Corporation, a New York corporation, so long as such party shall have any interest in the Trust Estate, and transferees thereof as permitted by Section 10.1 of the Participation Agreement.

"*Owner Participant Guarantor*" shall mean the provider of an Owner Participant Guaranty.

"*Owner Participant Guaranty*" shall mean any guaranty delivered in compliance with Section 10.1(i)(a) of the Participation Agreement.

"*Participants*" shall mean and include each Loan Participant and the Owner Participant.

"*Participation Agreement*" shall mean the Participation Agreement (Amtrak Trust 97-D) dated as of the date hereof among the Owner Trustee (as trustee under the Trust Agreement and in its individual capacity as expressly provided therein), the Indenture Trustee, the Lessee, and the Participants, as the same may from time to time be supplemented or amended, or the terms thereof waived or modified, to the extent permitted by, and in accordance with, the terms thereof and of the other Operative Documents.

"*Permissible Loan Participant*" shall mean, as at any date of determination, any Person who, at the time it acquires its interest in a Secured Note, has its principal office in a Qualifying Jurisdiction.

"*Permitted Investments*" has the meaning set forth in Annex A to the Participation Agreement.

"*Permitted Loan Participant*" shall mean any Person who, at the time it acquires its interest in a Secured Note, is entitled to complete exemption from the withholding and deduction of United States Federal Taxes on interest received by it on any Secured Notes held by it by reason of being:

(i) a United States Person within the meaning of Section 7701(a)(30) of the Code who is described in Treasury Regulation Section 1.6049-4(c)(1)(ii),

(ii) a Non-U.S. Person whose ownership of its interest in such Secured Note is effectively connected (within the meaning of Section 864(c) of the Code) with the conduct of a trade or business within the United States through a permanent establishment, or

(iii) a resident of a Qualifying Jurisdiction (other than the United States) who is entitled to claim the benefits of the income tax treaty between its country of residence (as the case may be) and the United States, as then in effect.

"*Prime Rate*" shall mean for any day the interest rate publicly announced in New York, New York by The Chase Manhattan Bank, as its prime rate for domestic (United States) commercial loans in effect on such day.

"*Qualifying Jurisdiction*" shall mean Austria, France, Germany, the Republic of Ireland, Luxembourg, the Netherlands, Switzerland, the United Kingdom, Japan or the United States.

"*Reinvestment Yield*" shall mean, with respect to the Called Principal of any Secured Note, 0.50% over the yield to maturity implied by (i) the yields reported, as of 10:00 A.M. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal on the display designated as "Page 678" on the Telerate Access Service (or such other display as may replace Page 678 on Telerate Access Service) for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the Yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. Such implied yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the actively traded U.S. Treasury security with the duration closest to and greater than the Remaining Average Life and (2) the actively traded U.S. Treasury security with the duration closest to and less than the Remaining Average Life.

"*Remaining Average Life*" shall mean, with respect to any Called Principal, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years (calculated to the nearest one-twelfth year) that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

"*Remaining Scheduled Payments*" shall mean, with respect to the Called Principal of any Secured Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called

Principal were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the terms of the Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date.

"*Replacement Unit*" shall mean any unit of equipment substituted for the Equipment pursuant to Section 7 of the Lease and Section 5.06 hereof.

"*Secured Notes*" or "*Notes*" shall have the meaning set forth in Section 2.02 hereof, and shall include any Secured Note issued in exchange therefor or replacement thereof pursuant to Section 2.09, 2.10, 2.16 or 2.17 hereof.

"*Settlement Date*" shall mean, with respect to the Called Principal of any Secured Note, the date on which such Called Principal is to be prepaid or has become or is declared to be immediately due and payable, as the context requires.

"*Trust Agreement and Indenture Supplements*" shall mean supplements to the Trust Agreement and to this Indenture, in substantially the form of Exhibit A hereto, which shall particularly describe the Equipment and any Replacement Unit included in the property of the Owner Trustee covered by the Trust Agreement.

"*Trust Company*" means the institution serving as Owner Trustee under the Trust Agreement, in its individual capacity.

"*Trust Indenture Estate*" shall mean all estate, right, title and interest of the Indenture Trustee in and to any of the properties, rights, interests and privileges granted to the Indenture Trustee pursuant to the Granting Clause of this Indenture, excluding, however, in each case, Excluded Payments.

SECTION 1.02. **Reference to Other Documents.** For all purposes of this Indenture capitalized terms used but not defined herein are used as defined in Annex A to the Lease. Except as otherwise provided in Section 1.01 hereof, the rules of interpretation set forth in Section 1.2 of the Lease shall also apply to this Indenture, and by this reference are incorporated herein, with references therein to "this Lease" meaning this Indenture for purposes hereof.

ARTICLE II

THE SECURED NOTES

SECTION 2.01. **Form of Secured Notes.** The Secured Notes and the Indenture Trustee's form of certificate of authentication to appear on the Secured Notes shall each be substantially in the form of Exhibit C hereto.

SECTION 2.02. **Terms of Secured Notes.** (a) The Secured Notes shall be issued in an aggregate principal amount of \$_____ (the "Secured Notes") and shall have a stated maturity of the Installment Payment Date occurring July 2, 2014. On the Closing Date, a Secured Note shall be issued to and registered in the name of each of the institutions (or their respective nominees) listed on Schedule I to the Participation Agreement and identified therein as a Loan Participant in the respective aggregate principal amounts set forth therein.

(b) The aggregate principal amount of the Secured Notes shall be due and payable in semi-annual installments, payable on Installment Payment Dates, as set forth in Schedule I hereto (provided, however, that the final principal payment for each Secured Note shall in any and all events equal the then outstanding principal balance thereof).

(c) Each Secured Note shall bear interest at the Applicable Rate on the unpaid principal amount thereof from time to time outstanding from and including the date thereof until such principal is paid in full. Accrued interest on each Secured Note shall be payable in arrears on each Installment Payment Date and on the date such Secured Note is paid in full. Notwithstanding the foregoing, each Secured Note shall bear interest at the applicable Overdue Rate on any principal thereof and, to the extent permitted by applicable law, on any interest or other amounts due thereunder, not paid when due (whether at stated maturity, by acceleration or otherwise), and shall be payable on demand by the Note Holder thereof.

(d) The Secured Notes shall be executed on behalf of the Owner Trustee by one of its authorized officers. Secured Notes bearing the signatures of individuals who were at any time the proper officers of the Owner Trustee shall bind the Owner Trustee, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Secured Notes or did not hold such offices at the respective dates of such Secured Notes. The Owner Trustee may from time to time execute and deliver Secured Notes (not, however, exceeding in aggregate original principal amount the amount specified in Section 2.02(a) hereof) to the Indenture Trustee for authentication upon original issue and such Secured Notes shall thereupon be authenticated and delivered by the Indenture Trustee upon the written request of the Owner Trustee signed by an authorized officer, provided that each such request shall specify the aggregate original principal amount of all Secured Notes to be authenticated hereunder on original issue. Each Secured Note issued hereunder on the Closing Date shall be dated the date of its issuance. No Secured Note shall be secured by or entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Secured Note a certificate of authentication in the form provided for herein executed by the Indenture Trustee by the manual signature of one of its authorized officers, and such certificate upon any Secured Note shall be conclusive evidence, and the only evidence, that such Secured Note has been duly authenticated and delivered hereunder.

SECTION 2.03. **Limitations on Prepayments; Indemnities; Currency.**
(a) Secured Notes shall not be subject to prepayment except as provided in Sections 2.12 and 2.14 hereof.

(b) The Owner Trustee agrees to pay over to the Indenture Trustee for distribution in accordance with Section 3.04(b) hereof any and all amounts received by the Owner Trustee in respect of indemnity amounts paid by the Lessee in respect of the Note Holders pursuant to Sections 6.1 and 6.2 of the Participation Agreement.

(c) The obligations of the Owner Trustee payable hereunder or under the Secured Notes are payable in Dollars.

SECTION 2.04. Taxes; Withholding. The Indenture Trustee agrees, to the extent required by applicable law, to withhold from each payment due hereunder or under any Secured Note, United States withholding taxes at the appropriate rate, and, on a timely basis, to deposit such amounts with an authorized depository and make such reports, filings and other reports in connection therewith, and in the manner, required under applicable law. Upon any such withholding, the Indenture Trustee shall forthwith notify the affected Note Holder, the Owner Trustee and the Lessee of such withholding. The Indenture Trustee shall promptly furnish to each Note Holder (but in no event later than the date 30 days after the due date thereof) a U.S. Treasury Form 1042S (or similar forms as at any relevant time in effect), if applicable, indicating payment in full of any Taxes withheld from any payments by the Indenture Trustee to such Persons together with all such other information and documents reasonably requested by the Note Holder and necessary or appropriate to enable each Note Holder to substantiate a claim for credit or deduction with respect thereto for income tax purposes in any jurisdiction with respect to which such Note Holder is required to file a tax return. In the case of a Note Holder that is a Non-U.S. Person, the Indenture Trustee agrees to furnish such Note Holder with such forms and other documentation as may be necessary or desirable to enable such Note Holder to claim an exemption from, or reduced rate of, such taxes and provided that such Note Holder has furnished the Indenture Trustee with the requested forms and other documentation and has not notified the Indenture Trustee of the withdrawal or inaccuracy of such form prior to the date of each interest payment, only the reduced amount (if any) required by applicable law or treaty shall be withheld from payments under the Secured Notes held by such Note Holder in respect of United States federal income tax. In the case of a Note Holder that is a Non-U.S. Person and has furnished to the Indenture Trustee (A) two complete and effective original signed copies of Internal Revenue Service Form 4224 evidencing such Note Holder's qualification for a complete exemption from U.S. federal income tax on all payments made under this Indenture and its Secured Notes, (B) two complete and effective original signed copies of Internal Revenue Service Form 1001 evidencing such Note Holder's qualification for a complete exemption from U.S. federal income tax on all payments made under this Indenture and its Secured Notes on the basis of a treaty between the United States and the country of residence of such Note Holder, (C) two complete and effective original signed copies of United States Treasury Form W-9 and a certificate substantially in the form of Exhibit B or (D) such other or successor forms or certificates as may be appropriate evidencing such Note Holder's complete exemption from U.S. federal income taxes on all payments made under this Indenture and its Secured Notes, in each case during the calendar year in which the payment is made, or in either of the two preceding calendar years, no amount shall be withheld from payments under the Secured Notes held by such Note Holder in respect of United States federal income tax. If any Note Holder has notified the Indenture Trustee that any of the foregoing Forms or certificates is withdrawn or inaccurate, or if the

Internal Revenue Code or the regulations thereunder or the administrative interpretation thereof are at any time after the date hereof amended to require such withholding of United States federal income taxes from payments under the Secured Notes held by such Note Holder, or if such withholding is otherwise required, the Indenture Trustee agrees to withhold from each payment due to the relevant Note Holder withholding taxes at the appropriate rate under applicable law, and will, as more fully provided above, on a timely basis, deposit such amounts with an authorized depository and make such reports, filings and other reports in connection therewith, and in the manner required under applicable law.

If a Note Holder shall make a claim to the Lessee for indemnification under Section 6.1 of the Participation Agreement in respect of U.S. Withholding Taxes (as defined therein and for purposes hereof a "*U.S. Withholding Tax Claim*") imposed on or in respect of any Secured Note, and the Owner Trustee (on the written direction of the Lessee) provides within 60 days thereof a Permitted Loan Participant ready, willing and able to purchase such Secured Note and assume such Note Holder's rights and obligations under the Operative Documents with respect thereto, then such Note Holder shall (unless it shall waive any claim for any future indemnity thereunder for such U.S. Withholding Tax) sell, assign, transfer and convey to such Permitted Loan Participant (without recourse, representation or warranty of any kind except the absence of any Lien thereon arising by reason of its own acts) all its right, title and interest in and to such Secured Note and the Operative Documents with respect thereto (excluding all right, title and interest under any of the foregoing to the extent such right, title or interest is with respect to any action or inaction or state of affairs or event occurring prior to such sale) under an instrument of assignment acceptable to such Note Holder and such Permitted Loan Participant, for a purchase price equal to the outstanding principal amount of such Secured Note, accrued interest thereon to but excluding the date of assignment and all other amounts owing under or in respect of such Secured Note.

SECTION 2.05. Payments from Trust Indenture Estate Only. All payments to be made by the Owner Trustee under this Indenture shall be made only from the income and the proceeds from the Trust Estate to the extent included in the Trust Indenture Estate and only to the extent that the Owner Trustee shall have sufficient income or proceeds from the Trust Indenture Estate to enable the Indenture Trustee to make payments in accordance with the terms hereof. Each Note Holder, by its acceptance of such Secured Note, agrees that it will look solely to the income and proceeds from the Trust Indenture Estate to the extent available for distribution to it as herein provided and that none of the Owner Participant, the Trust Company nor the Indenture Trustee is personally liable to it for any amounts payable under this Indenture or such Secured Note or for any liability under this Indenture, except as expressly provided herein (in the case of the Trust Company and the Indenture Trustee) or in the Participation Agreement (in the case of the Owner Participant, the Trust Company and the Indenture Trustee).

SECTION 2.06. Method of Payment. Principal, and interest and other amounts due hereunder or under the Secured Notes shall be payable in Dollars in immediately available funds on the due date thereof, to the Indenture Trustee at the Corporate Trust Office, ABA No. 052-000-113, Credit Trust Receipts A/C # 090-0276-4, Re: Amtrak 97-D, Attention: Corporate Trust Department (or such other account at such other financial institution in New York City or

Baltimore, Maryland as the Indenture Trustee may so specify from time to time to the Owner Trustee and the Lessee) and the Indenture Trustee shall remit all such amounts so received by it to such address and in such manner (by wire transfer of immediately available funds if not otherwise specified) to the accounts specified in Schedule I to the Participation Agreement (or as any Note Holder shall at any time otherwise specify in writing to the Indenture Trustee). If the payment was received prior to 1:00 P.M. New York time by the Indenture Trustee on any Business Day, the Indenture Trustee shall remit such amounts by 3:00 P.M. New York time on such Business Day; otherwise, the Indenture Trustee shall remit such amounts promptly, but not later than 11:00 A.M. New York time on the next succeeding Business Day. In the event the Indenture Trustee shall fail to make any such payment as provided in the immediately foregoing sentence after its receipt of funds at the place and by the time specified above, the Indenture Trustee, in its individual capacity and not as Trustee, agrees to compensate the Note Holders at an interest rate equal to the Prime Rate for the period from the date such amount is due to, but excluding, the date such amount is paid in full. If any sum payable hereunder to any Note Holder falls due on a day which is not a Business Day, then such sum shall be payable on the next succeeding Business Day and no interest shall accrue on the amount of such payment if such payment is made on such next succeeding Business Day. Prior to the due presentment for registration of transfer of any Secured Note, the Owner Trustee, the Indenture Trustee and the Lessee may deem and treat the Person in whose name any Secured Note is registered on the Note Register as the absolute owner and holder of such Secured Note for the purpose of receiving payment of all amounts payable with respect to such Secured Note and for all other purposes, and neither the Owner Trustee nor the Indenture Trustee nor the Lessee shall be affected by any notice to the contrary.

SECTION 2.07. **Application of Payments.** Subject to Section 3.03 hereof, each payment of principal and interest or other amounts due on each Secured Note shall be applied, first, to the payment of interest on such Secured Note due and payable to the date of such payment, as in such Secured Note provided, as well as any interest on overdue principal or, to the extent permitted by law, interest and other amounts thereunder, second, to the payment of any other amount (other than the principal of such Secured Note) due under such Secured Note, third, to the payment of the principal of such Secured Note then due thereunder and fourth, the balance, if any, remaining thereafter, to the payment of the principal of such Secured Note remaining unpaid (provided that such Secured Note shall not be subject to prepayment without the consent of the holder thereof except as permitted by Sections 2.12 and 2.14 hereof). The amounts paid pursuant to clause "fourth" above shall be applied to the installments of principal of such Secured Note in inverse order of maturity.

SECTION 2.08. **Termination of Interest in Trust Indenture Estate.** A Note Holder shall not, as such, have any further interest in, or other right with respect to, the Trust Indenture Estate when and if the principal amount of and premium, if any, and interest on and other amounts due under all Secured Notes held by such holder and all other sums payable to such holder hereunder shall have been paid in full.

SECTION 2.09. **Registration, Transfer and Exchange of Secured Notes.** The Indenture Trustee agrees with the Owner Trustee that the Indenture Trustee shall keep a register

(herein sometimes referred to as the "Note Register") in which provisions shall be made for the registration of Secured Notes and the registration of transfers of Secured Notes. The Note Register shall be kept at the Corporate Trust Office of the Indenture Trustee, and the Indenture Trustee is hereby appointed "Secured Note Registrar" for the purpose of registering Secured Notes and transfers of Secured Notes as herein provided. Upon surrender for registration of transfer of any Secured Note at the Corporate Trust Office, the Owner Trustee shall execute, and the Indenture Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Secured Notes of a like aggregate principal amount; provided that as a condition to any such transfer, the Indenture Trustee may require evidence satisfactory to it of the compliance of such transfer with the Securities Act of 1933, as amended. At the option of any Note Holder, Secured Notes held by such holder may be exchanged for other Secured Notes of any authorized denominations, of like aggregate principal amount, upon surrender of the Secured Notes to be exchanged at the Corporate Trust Office. Each new Secured Note issued upon transfer or exchange shall be in a principal amount of at least \$100,000 (or such lesser amount as shall equal the entire outstanding principal amount of all Secured Notes held by any Note Holder) and dated the date of the surrendered Secured Note. Whenever any Secured Notes are so surrendered for exchange, the Owner Trustee shall execute, and the Indenture Trustee shall authenticate and deliver, the Secured Notes which the Note Holder making the exchange is entitled to receive. All Secured Notes issued upon any registration of transfer or exchange of Secured Notes shall be the valid obligations of the Owner Trustee evidencing the same respective obligations, and entitled to the same security and benefits under this Indenture, as the Secured Notes surrendered upon such registration of transfer or exchange. Every Secured Note presented or surrendered for registration of transfer or exchange, shall (if so required by the Indenture Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Indenture Trustee duly executed by the holder thereof or his attorney duly authorized in writing. The Indenture Trustee shall make a notation on each new Secured Note of the amount of all payments of principal previously made on the old Secured Note or Secured Notes with respect to which such new Secured Note is issued and the date to which interest on such old Secured Note or Secured Notes has been paid. The Owner Trustee shall not be required to exchange any surrendered Secured Notes as above provided during the seven calendar day period preceding the due date of any payment on such Secured Note. The Indenture Trustee shall not register a transfer of any Secured Note unless it shall have received a certificate of the transferor certifying that such transferor has complied with the provisions of Section 10.2 of the Participation Agreement in respect of such transfer or that such Section is inapplicable to such transfer. By its acceptance thereof, each holder of a Secured Note agrees to be bound by and comply with the provisions of the Participation Agreement and this Indenture applicable to a Loan Participant or a Note Holder. Any assignment or other transfer of all or any portion of any Secured Note may be effected only in accordance with the provisions of this Section 2.09.

SECTION 2.10. Mutilated, Destroyed, Lost or Stolen Secured Notes. If any Secured Note shall become mutilated, destroyed, lost or stolen, the Owner Trustee shall, upon the written request of the affected Note Holder, execute and the Indenture Trustee shall authenticate and deliver, in replacement thereof, a new Secured Note in the same principal amount, dated the date of the Secured Note being replaced and issued under this Indenture. If the Secured Note being replaced has become mutilated, such Secured Note shall be surrendered to the Indenture

Trustee and a photocopy thereof shall be furnished to the Owner Trustee by the Indenture Trustee. If the Secured Note being replaced has been destroyed, lost or stolen, the affected Note Holder shall furnish to the Owner Trustee and the Indenture Trustee such security or indemnity as may be required by them to save the Owner Trustee and the Indenture Trustee harmless and evidence satisfactory to the Owner Trustee and the Indenture Trustee of the destruction, loss or theft of such Secured Note and of the ownership thereof; provided, that if the affected Note Holder is an institutional investor, the written notice of such destruction, loss or theft and the written undertaking of such holder delivered to the Owner Trustee and the Indenture Trustee shall be sufficient evidence, security and indemnity.

SECTION 2.11. Payment of Expenses on Transfer. Upon the issuance of a new Secured Note or Secured Notes pursuant to Section 2.09 or 2.10 hereof, the Owner Trustee and/or the Indenture Trustee may require from the party requesting such new Secured Note or Secured Notes, without any right of reimbursement under any Operative Document, payment of a sum to reimburse the Owner Trustee and/or the Indenture Trustee for, or to provide funds for, the payment of any tax or other governmental charge in connection therewith or any charges and expenses connected with such tax or other governmental charge paid or payable by the Owner Trustee or the Indenture Trustee.

SECTION 2.12. Optional Prepayment. (a) The Owner Trustee may prepay the Secured Notes in whole but not in part on any Business Day in connection with a refinancing of the Secured Notes as provided in Section 14.8 of the Participation Agreement (including any such refinancing effected pursuant to Section 14.14 of the Participation Agreement) at their respective outstanding principal amounts, plus interest accrued thereon to the date of prepayment, plus Breakage Amount, if any, payable in respect thereof and all other amounts owing to the Note Holders under the Operative Documents.

(b) Irrevocable notice of prepayment pursuant to Section 2.12(a) shall be given by the Owner Trustee in the manner specified in Section 10.06 hereof at least ten (10) days prior to the date fixed for prepayment and shall specify (x) that it is a notice of prepayment made pursuant to Section 2.12 hereof and (y) the date fixed for prepayment. Upon the giving of any such notice there shall become due and payable on the date specified the outstanding principal amount of each affected Secured Note together with interest accrued thereon until the date of payment plus Breakage Amount, if any, payable in respect thereof and all other amounts owing to the Note Holders under the Operative Documents.

(c) Concurrently with any prepayment made pursuant to Section 2.12(a) hereof or Section 2.14 hereof, or concurrently with any purchase pursuant to Section 2.13 hereof, the Owner Trustee and the Lessee shall be furnished a certificate setting forth computations in reasonable detail showing the manner of calculation of any Breakage Amount in connection with any such prepayment or purchase.

SECTION 2.13. Purchase Upon Event of Default. If (a) a Lease Event of Default shall have occurred and shall have been continuing for a period of 180 days or (b) the Secured Notes shall have become due and payable as provided in Article IV hereof, the Owner

Participant may within 90 days thereafter elect to purchase all, but not less than all, Secured Notes then outstanding in accordance with the provisions of this Section 2.13. To exercise such election the Owner Participant shall give written notice thereof to each Note Holder and upon receipt of any such notice duly given in accordance with the provisions of this Section 2.13, the Indenture Trustee shall not, so long as no Event of Default which does not result from a Lease Event of Default shall have occurred and be continuing, proceed to foreclose the Lien of this Indenture or exercise any other remedies hereunder prior to such designated date of purchase. Such notice to the Note Holders shall designate a date not more than fourteen (14) calendar days thereafter as the payment date. Upon payment to it in the manner provided for in Section 2.06 hereof from the Owner Participant of an amount equal to the aggregate unpaid principal amount of all Secured Notes then held by such Note Holder, together with accrued and unpaid interest thereon to the date of payment (but without any Breakage Amount) such Note Holder shall forthwith sell, assign, transfer and convey to the Owner Participant (without recourse, representation or warranty of any kind except for its own acts), all of the estate, right, title and interest of such Note Holder in and to the Trust Indenture Estate, this Indenture and all Secured Notes held by such Note Holder (excluding all estate, right, title and interest under the Operative Documents to the extent such right, title or interest is with respect to an obligation not then due and payable or past due and not satisfied by the Owner Participant, with respect to any action or inaction or state of affairs occurring prior to such sale). The Owner Participant shall assume all of such Note Holder's obligations under the Participation Agreement and this Indenture arising subsequent to such sale. If the Owner Participant shall so request, such Note Holder will comply with all the provisions of Section 2.09 hereof to enable new Secured Notes to be issued to the Owner Participant in such denominations as the Owner Participant shall request. All charges and expenses required pursuant to Section 2.11 hereof in connection with the issuance of any such new Secured Note pursuant to this Section shall be borne by the Owner Participant. Any election to purchase the Secured Notes under this Section 2.13 shall be irrevocable.

SECTION 2.14. **Mandatory Prepayment.** The Secured Notes shall be prepaid in full or in part, as provided below, and, in connection therewith, immediately available funds in Dollars shall be deposited by the Owner Trustee in the account of the Indenture Trustee at the place and by the time and otherwise in the manner provided in Section 2.06 hereof, as follows:

(a) upon the occurrence of a Casualty Occurrence in respect of the any Unit or Units (unless pursuant to Section 7 of the Lease and Section 5.06 hereof a Replacement Unit shall have been substituted for the Unit subject to such Casualty Occurrence), on the date specified for payment of Casualty Value with respect to such Casualty Occurrence in Section 7 of the Lease, the Secured Notes shall be prepaid in full or (if the fraction in the following clause (i) is less than 1) in part (equal to the principal amount determined by such clause (i)), at a price equal to the sum of (i) as to principal thereof, an amount equal to the product obtained by multiplying the aggregate unpaid principal amount of such Secured Note as at the date of such prepayment for such Unit or Units (after deducting therefrom the principal installment, if any, due on such date) by a fraction, the numerator of which shall be the Equipment Cost of such Unit or Units and the denominator of which shall be the aggregate Equipment Cost of all Units included in the Trust Indenture Estate immediately prior to the date of such determination and (ii) as

to interest, the aggregate amount of interest accrued and unpaid in respect of the principal amount to be prepaid pursuant to clause (i) above to but not including the date of prepayment after giving effect to the application of any Base Rent paid on or prior to the date of such prepayment, but without the payment of any Breakage Amount, and (iii) all such other sums then due and payable hereunder and thereunder;

(b) at any time, upon the Lessee's or the Lessor's election to terminate the Lease with respect to any Unit or Units as provided in Section 26 of the Lease (unless such election shall have been revoked pursuant to Section 26.3 of the Lease), on the Termination Date, the Secured Notes shall be prepaid in full or (if the fraction in the following clause (i) is less than 1) in part (equal to the principal amount determined by such clause (i)), at a price equal to the sum of (i) as to principal thereof, an amount equal to the product obtained by multiplying the aggregate unpaid principal amount of such Secured Notes as at the date of such prepayment for such Unit or Units (after deducting therefrom the principal installment, if any, due on such date) by a fraction, the numerator of which shall be the Equipment Cost of such Unit or Units and the denominator of which shall be the aggregate Equipment Cost of all Units included in the Trust Indenture Estate immediately prior to the date of such prepayment and (ii) as to interest, the aggregate amount of interest accrued and unpaid in respect of the principal amount to be prepaid pursuant to clause (i) above to but not including the date of prepayment after giving effect to the application of any Base Rent paid on or prior to the date of such prepayment, (iii) an amount equal to the Breakage Amount, if any, in respect of the principal amount to be prepaid pursuant to clause (i) above and (iv) all such other sums then due and payable hereunder and thereunder; and

(c) at any time, upon the Lessee's election to purchase the Equipment as provided in Section 16.1 of the Lease, on the date of such purchase, the Secured Notes (unless assumed as provided therein and in Section 2.17 hereof) shall be prepaid in full, at a price equal to the sum of (i) as to principal thereof, an amount equal to the aggregate unpaid principal amount of such Secured Notes as at the date of such prepayment (after deducting therefrom the principal installment, if any, due on such date) plus (ii) as to interest, the aggregate amount of interest accrued and unpaid in respect of the principal amount to be prepaid pursuant to clause (i) above to but not including the date of prepayment after giving effect to the application of any Base Rent paid on or prior to the date of such prepayment, plus (iii) an amount equal to Breakage Amount, if any, in respect of principal to be paid pursuant to clause (i) above, plus (iv) all such other sums then due and payable hereunder and thereunder.

SECTION 2.15. Secured Notes in Respect of Replacement Equipment. Upon the execution and delivery of a Trust Agreement and Indenture Supplement covering a Replacement Unit, as provided in Section 5.06 hereof, each Secured Note shall be deemed to have been issued in connection with such Replacement Unit and any other Units then in the Trust Indenture Estate, and each Secured Note issued thereafter upon a transfer or exchange of, or as a replacement for, a Secured Note, shall be designated as having been issued in connection with

such Replacement Unit and any other Units then in the Trust Indenture Estate, but without any other change therein except as provided for in this Article II.

SECTION 2.16. Assumption of Secured Notes by the Lessee. (a) In the event that the Lessee shall have elected to assume the rights and obligations of the Owner Trustee under this Indenture and the Secured Notes in connection with the purchase by the Lessee of all of the Units then in the Trust Indenture Estate and termination of the Lease pursuant to Section 16.1 of the Lease, the Owner Trustee shall so notify the Indenture Trustee and each Note Holder and, so long as no Specified Default or Lease Event of Default shall have occurred and be continuing on the purchase date and date of assumption (the "Assumption Date") specified in such notice, which date shall be not less than 30 nor more than 60 days after the date of the Indenture Trustee's receipt of such notice, upon delivery to the Indenture Trustee of the documents referred to below, the Lessee shall assume all of the rights and obligations of the Owner Trustee hereunder and under the Secured Notes then outstanding:

(i) (A) an instrument of assumption (the "Assumption Agreement") pursuant to which the Lessee irrevocably and unconditionally assumes and undertakes, with full recourse to the Lessee, the Owner Trustee's obligations (the "Assumed Obligations") with respect to principal, interest and all other amounts payable to the Note Holders, the Loan Participants or the Indenture Trustee under the Secured Notes, this Indenture and the Participation Agreement and releases Owner Trustee and Owner Participant from all of their respective obligations thereunder and which incorporates therein events of default substantially similar in scope and effect to those set forth in the Lease (and eliminating those no longer relevant with respect to the Owner Participant) and covenants substantially similar to the covenants of the Lessee under the Lease, and (B) if requested by a Majority in Interest of Note Holders, the Lessee shall also issue, and the Indenture Trustee shall also authenticate, new Secured Notes evidencing such assumption and the full recourse nature of the Lessee's obligations thereunder;

(ii) a supplement to this Indenture and/or such other instruments and documents (including, without limitation, Uniform Commercial Code financing statement(s) covering all of the security interests created by or pursuant to this Indenture that are not covered by the recording system established by the Surface Transportation Board and the Transportation Act of Canada as may be necessary (or reasonably requested by the Note Holders or the Indenture Trustee)) for the security interest of the Indenture Trustee in the Equipment and in the other rights, property and interests included in the Trust Indenture Estate (other than those rights, property and interests that depend on the existence of the Trust Estate and the participation of the Owner Trustee and the Owner Participant in the transactions contemplated by the Participation Agreement and this Indenture) to continue to be perfected and duly recorded with the Surface Transportation Board, and in all other places necessary or, in the reasonable opinion of the Note Holders, advisable under the Uniform Commercial Code or, if applicable, the comparable laws of such other jurisdiction;

(iii) an insurance report dated the Assumption Date of an independent insurance broker and the certificates of insurance, each in form and substance reasonably satisfactory to the Note Holders and the Indenture Trustee as to the due compliance as of the Assumption Date with the terms of Section 8 of the Lease (as incorporated into the Assumption Agreement and as relates to the Note Holders and the Indenture Trustee) relating to the insurance with respect to the Equipment;

(iv) evidence that as of the Assumption Date the Lessee has good title to the Equipment free and clear of all Liens other than the Lien of, and the security interest created by, this Indenture and other Permitted Liens (other than Lessor's Liens);

(v) a certificate from the Lessee that no Specified Default or Lease Event of Default shall have occurred and be continuing as of the Assumption Date;

(vi) an opinion of Thelen, Marrin, Johnson & Bridges LLP (or other counsel reasonably satisfactory to the Note Holders and the Indenture Trustee) in form and substance reasonably satisfactory to the Note Holders and the Indenture Trustee, addressed to the Note Holders and the Indenture Trustee and dated the Assumption Date, with customary qualifications, to the effect that (A) the execution, delivery and performance of the Assumption Agreement, the supplement to this Indenture referred to in paragraph (ii) of this Section 2.16 and all other instruments and documents referred to in clause (viii) below or otherwise executed and delivered by the Lessee in connection with the assumption of the obligations contemplated by this Section 2.16 or otherwise necessary for the continued perfection of the security interests referred to in paragraph (ii) of this Section 2.16 have, in each instance, been duly authorized by all necessary action; (B) the Assumption Agreement, such supplement to this Indenture, all such other documents and instruments referred to above are legal, valid and binding obligations of the Lessee enforceable in accordance with their terms (with customary qualifications); (C) the Assumption Agreement, such supplement, and all such other documents and instruments referred to above do not and will not contravene any provision of the Lessee's articles of incorporation or by-laws or any law or regulation applicable to the Lessee or any agreement, mortgage or instrument to which the Lessee is a party or by which the Lessee is bound; (D) after giving effect to the transactions contemplated hereby, the Lien of this Indenture continues to constitute a valid and duly perfected Lien on the Equipment subject to no prior Liens of record and (E) to such further effect with respect to such other matters (including, without limitation, any matters included in the opinion delivered on the Closing Date pursuant to Section 5.1(x)(c) of the Participation Agreement, to the extent such matters are relevant at the time of the assumption contemplated by this Section 2.16) as the Note Holders may reasonably request;

(vii) legal opinions from counsel reasonably satisfactory to the Note Holders and the Indenture Trustee and in form and substance reasonably satisfactory to the Note Holders and the Indenture Trustee, addressed to the Note Holders and the Indenture Trustee and dated the Assumption Date, to the effect that (A) all documents executed in connection with the assumption of the obligations contemplated by this

Section 2.16 and required to be filed pursuant to the ICC Termination Act of 1995 and pursuant to the Transportation Act of Canada are in proper form, and all steps necessary have been taken, for the Lien of this Indenture with respect to the Equipment to continue to be duly perfected; and (B) to such further effect with respect to such other matters (including, without limitation, any matters included in the opinion delivered on the Closing Date pursuant to Section 5.1(x)(c) of the Participation Agreement, to the extent such matters are relevant at the time of the assumption contemplated by this Section 2.16) as the Note Holders may reasonably request;

(viii) such other documentation or evidence reasonably requested by the Majority in Interest of Note Holders (in form and substance reasonably satisfactory to the Note Holders and the Indenture Trustee) to amend the Operative Documents to give effect to the foregoing and in order to establish the authority of the Lessee, the Owner Trustee, the Indenture Trustee and the Owner Participant to consummate the transactions contemplated by the assumption and the taking of all corporate proceedings in connection therewith.

(b) It shall be a condition of any transaction contemplated by paragraph (a) of this Section 2.16 that such instruments as the Owner Trustee or Owner Participant may reasonably request, prepared at the sole cost and expense of Lessee, evidencing the release and discharge of the Owner Trustee from any liability on or with respect to the Secured Notes or this Indenture and discharging the Lien of the Indenture Trustee upon the purchase price of the Equipment distributed to the Owner Trustee, shall be delivered to the Owner Trustee.

(c) Neither the Lessee nor any other Person may assume the Secured Notes except pursuant to and in accordance with the provisions of this Section 2.16. Lessee shall pay all reasonable costs and expenses (including counsel's fees and disbursements) of the Owner Trustee, Owner Participant, Indenture Trustee and the Note Holders (which shall engage a single counsel in each relevant jurisdiction) in connection with the consummation of the transactions contemplated by this Section 2.16.

SECTION 2.17. **Reamortization.** (a) Within three months after the Closing Date (the "*Reamortization Date*"), new Secured Notes may be issued hereunder in exchange for all Secured Notes theretofore issued hereunder and then outstanding, all on the terms and conditions set forth in this Section 2.17, Section 16 of the Participation Agreement and Section 4.3 of the Lease; provided that (i) such issuance and exchange may occur only one time, (ii) the principal amount of each Secured Note issued pursuant to this Section 2.17 shall equal the outstanding principal amount of the Secured Note surrendered therefor, (iii) the weighted average life to maturity from the Closing Date (as determined by the holders thereof) of newly issued Secured Notes shall be within six months, plus or minus, of the weighted average life to maturity of the Secured Notes as issued on the Closing Date, and (iv) the terms (including, without limitation, the final maturity thereof and principal installments that have already come due) of newly issued Secured Notes shall be the same as those of the Secured Notes surrendered therefor except only that the amortization schedules of the newly issued Secured Notes may be adjusted in a manner consistent with the provisions of this sentence and the aforesaid provisions of the Lease and the

Participation Agreement. It is expressly understood and agreed that the above-referred to exchange of Secured Notes shall not constitute a prepayment of the indebtedness evidenced thereby but rather an adjustment of the terms of such indebtedness.

(b) To give effect to the foregoing, the Owner Trustee and the Indenture Trustee shall, at the request (and cost and expense) of the Lessee, but subject always to the terms and conditions of this Section 2.17, execute and deliver an amendment to this Indenture which shall amend Section 2.02(b) of this Indenture to set forth the new amortization schedules of the Secured Notes and set forth such additional terms and conditions as may be necessary or desirable to give effect to the foregoing exchange of Secured Notes.

(c) Upon the execution and delivery by the Owner Trustee and the Indenture Trustee of the aforesaid amendment to this Indenture, the Owner Trustee shall execute and deliver to the Indenture Trustee, and the Indenture Trustee shall authenticate and deliver to each Note Holder, in exchange for each Secured Note then held by such holder, a new Secured Note, dated the same date as the surrendered Secured Note, designated as having been issued in connection with the Equipment, in the same principal amount, payable as to principal as provided in the aforesaid amendment hereto and otherwise complying with the provisions of this Section 2.17. Each such newly issued Secured Note shall be delivered against receipt by the Indenture Trustee of the then outstanding Secured Note to be surrendered therefor (which each Note Holder by its acceptance thereof agrees to surrender to the Indenture Trustee as provided in this Section 2.17).

SECTION 2.18. Amortization Schedules. (a) On the date of the partial prepayment of any Secured Note, the Owner Trustee shall deliver to the Indenture Trustee two copies of an amortization schedule with respect to such Secured Note in such form as is provided to the Owner Trustee by the Owner Participant or the Lessee setting forth the amount of the installment payments to be made on such Secured Note after the date of such partial prepayment. The Indenture Trustee shall deliver, or send by first-class mail, postage prepaid, one such copy of the applicable schedule to the holder of such Secured Note.

(b) Within three months of such prepayment, new Secured Notes may be issued hereunder in exchange for all Secured Notes theretofore issued hereunder and then Outstanding, all on the terms and conditions set forth in this Section 2.18; provided that (i) each remaining installment of principal under the Secured Note surrendered therefor shall be reduced by the quotient of the amount paid to the holder of such Secured Note in repayment of principal pursuant to Section 3.02 divided by the number of remaining installments of principal, and (ii) the other terms (including, without limitation, the final maturity thereof and interest rate) of newly issued Secured Notes shall be the same as those of the Secured Notes surrendered therefor except that the amortization schedules of the newly issued Secured Notes may be adjusted in a manner consistent with the provisions of this sentence.

(c) To give effect to the foregoing, the Owner Trustee and the Indenture Trustee shall, at the request (and cost and expense) of the Lessee, but subject always to the terms and conditions of this Section 2.18, execute and deliver an amendment to this Indenture

which shall amend Section 2.02(b) of this Indenture to set forth the new amortization schedules of the Secured Notes and set forth such additional terms and conditions as may be necessary or desirable to give effect to the foregoing exchange of Secured Notes.

(d) Upon the execution and delivery by the Owner Trustee and the Indenture Trustee of the aforesaid amendment to this Indenture, the Owner Trustee shall execute and deliver to the Indenture Trustee, and the Indenture Trustee shall authenticate and deliver to each Note Holder, in exchange for each Secured Note then held by such holder, a new Secured Note, dated the same date as the surrendered Secured Note, designated as having been issued in connection with the Equipment, in the same principal amount, payable as to principal as provided in the aforesaid amendment hereto and otherwise complying with the provisions of this Section 2.18. Each such newly issued Secured Note shall be delivered against receipt by the Indenture Trustee of the then outstanding Secured Note to be surrendered therefor (which each Note Holder by its acceptance thereof agrees to surrender to the Indenture Trustee as provided in this Section 2.18).

ARTICLE III

RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME FROM THE TRUST ESTATE

SECTION 3.01. Certain Rent Distributions. Except as otherwise provided in Section 3.03 hereof, each installment of Base Rent, any payment of interest on overdue installments of Base Rent and any payment received by the Indenture Trustee as contemplated by the first sentence of Section 4.03 hereof shall be promptly distributed in the following order of priority: first, so much of such installment or payment as shall be required to pay in full the aggregate amount of the payment or payments of principal and interest and other amounts (as well as any interest on overdue principal and, to the extent permitted by law, on interest and other amounts) then due under all Secured Notes shall be distributed to the Note Holders ratably, without priority of one over the other, in the proportion that the amount of such payment or payments then due under each such Secured Note bears to the aggregate amount of the payments then due under all such Secured Notes; and, second, the balance, if any, of such installment remaining thereafter shall be distributed to the Owner Trustee for distribution pursuant to the Trust Agreement; provided, however, that if an Event of Default shall have occurred and be continuing, then such balance as shall not constitute Excluded Payments shall not be distributed as provided in this clause "second" but shall be held by the Indenture Trustee as part of the Trust Indenture Estate until whichever of the following shall first occur: (i) all Events of Default shall have been cured, in which event such balance shall be distributed as provided in this clause "second", (ii) Section 3.03 hereof shall be applicable, in which event such balance shall be distributed in accordance with the provisions of said Section 3.03 or (iii) the 180th day after the receipt of such payment (such period to be extended if and so long as the Indenture Trustee shall be precluded by operation of law or by any judgment or order of any court or regulatory body of competent jurisdiction from exercising remedies under Article IV hereof or (if a Lease Event of

Default shall exist) under the Lease), in which event such balance shall be distributed as provided in this clause "second".

SECTION 3.02. Casualty Occurrence and Replacement; Lease Termination; Refinancing. (a) Except as otherwise provided in Sections 3.03 and 3.02(d) hereof, any payment received by the Indenture Trustee with respect to the Equipment as the result of a Casualty Occurrence with respect to one or more Units shall be applied to the prepayment of the Secured Notes and to all other amounts payable hereunder as provided in Section 2.14(a) hereof, as the case may be, by applying such funds first, to reimburse the Indenture Trustee for any reasonable out-of-pocket costs or expenses incurred in connection with such Casualty Occurrence, second, as provided in clause "second" of Section 3.03 hereof, third, as provided in clause "third" of Section 3.03 hereof, fourth, as provided in clause "fourth" of Section 3.03 hereof (as respects the Secured Notes being prepaid as aforesaid), fifth, as provided in clause "fifth" of Section 3.03 hereof (as respects the Secured Notes being prepaid as provided in said Sections), sixth, to the extent not required to be paid to the Lessee pursuant to Section 7 of the Lease, as provided in clause "sixth" of Section 3.03 hereof, seventh, as provided in clause "seventh" of Section 3.03, eighth, as provided in clause "eighth" of Section 3.03, and ninth, to the extent not required to be paid to the Lessee pursuant to Section 7 of the Lease, as provided in clause "ninth" of Section 3.03 hereof; provided, that if a Replacement Unit or Units are to be substituted for any Unit or Units subject to such Casualty Occurrence as provided in Section 7 of the Lease and Section 5.06 hereof, any proceeds which result from such Casualty Occurrence and are paid to the Indenture Trustee shall be held by the Indenture Trustee as part of the Trust Indenture Estate and, unless otherwise applied pursuant to Section 3.03 hereof after application to the Lessee's obligations under the Lease in accordance with the provisions thereof, such proceeds shall be released to the Lessee upon the release of such Unit or Units the subject of such Casualty Occurrence and the replacement thereof as provided in such Sections.

(b) Except as otherwise provided in Section 3.02(a), 3.02(d) or 3.03 hereof, any amounts received directly or indirectly from any Governmental Authority or insurer or other party not as a result of a Casualty Occurrence and pursuant to any provision of Section 7 or 8 of the Lease shall be applied as provided in the applicable provisions of the Lease and, if and to the extent that any portion of such amounts held for account of the Lessee are not at the time required to be paid to the Lessee pursuant to the applicable provisions of Section 7 or 8 of the Lease, shall be held by the Indenture Trustee as security for the obligations of the Lessee under the Lease and shall be invested in accordance with the terms of Section 3.07 hereof and at such time as the conditions specified in the Lease for payment of such amounts to the Lessee shall be fulfilled, such portion, and the net proceeds of any investment thereof, shall be paid to the Lessee to the extent provided in the Lease, unless such net proceeds have theretofore been applied to the Lessee's obligation under the Lease in accordance with the provisions thereof or the Secured Notes shall have theretofore become due and payable pursuant to Article IV hereof, in which event such portion shall be distributed forthwith in accordance with the provisions of Section 3.03 hereof.

(c) Except as otherwise provided in Section 3.02(d) or 3.03 hereof, any payment received by the Indenture Trustee with respect to a termination of the Lease pursuant to

Section 26 thereof or the refinancing of the Secured Notes pursuant to Section 14.8 of the Participation Agreement shall be applied to a prepayment of the relevant Secured Notes and to all other amounts payable hereunder as provided in Section 2.14(b) and (c) and Section 2.12(a) hereof, respectively, by applying such funds first, to reimburse the Indenture Trustee for any reasonable out-of-pocket costs or expenses incurred in connection with such prepayment, second, as provided in clause "second" of Section 3.03 hereof, third, as provided in clause "third" of Section 3.03 hereof, fourth, as provided in clause "fourth" of Section 3.03 hereof (as respects the Secured Notes being prepaid as provided in said Sections), fifth, as provided in clause "fifth" of Section 3.03 hereof (as respects the Secured Notes being prepaid as provided in said Sections) sixth, as provided in clause "sixth" of Section 3.03, seventh, as provided in clause "seventh" of Section 3.03, eighth, as provided in clause "eighth" of Section 3.03, and ninth, to the extent not required to be paid to the Lessee pursuant to Section 7 of the Lease, as provided in clause "ninth" of Section 3.03 hereof.

(d) Notwithstanding Section 3.03 or any reference to Section 3.03 hereof contained in paragraph (a), (b) or (c) of this Section 3.02, any amounts held by the Indenture Trustee, including, without limitation, pursuant to Section 7 or 8 of the Lease, which are payable to the Lessee pursuant to the terms of the Lease or held by the Indenture Trustee in accordance with Section 7.4 or 8.2 of the Lease shall be so paid to the Lessee or held by the Indenture Trustee as security for the obligations of the Lessee in accordance with the applicable provisions of the Lease.

SECTION 3.03. Payment After Event of Default, etc. Except as otherwise provided in Sections 3.02(d) and 6.07 hereof, all payments received and amounts held or realized by the Indenture Trustee (i) after an Event of Default shall have occurred and so long as such Event of Default shall be continuing and the Indenture Trustee has received a request in accordance with the first sentence of Section 5.02(b) hereof to pursue remedies in respect thereof or (ii) after the Secured Notes shall have become due and payable as provided herein, as well as all payments or amounts then held by the Indenture Trustee as part of the Trust Indenture Estate, shall be promptly distributed by the Indenture Trustee in the following order of priority:

first, so much of such payments or amounts as shall be required to reimburse the Indenture Trustee for any related tax, expense, charge or other loss (including, without limitation, all amounts to be expended at the expense of, or charged upon the tolls, rents, revenues, issues, products and profits of, the Indentured Property pursuant to Section 4.05(b) hereof) incurred by the Indenture Trustee (to the extent not previously reimbursed) (including, without limitation, the expenses of any sale, taking or other proceeding, reasonable attorneys' fees and expenses, court costs, and any other expenditures incurred or expenditures or advances made by the Indenture Trustee in the protection, exercise or enforcement of any right, power or remedy or any damages sustained by the Indenture Trustee, liquidated or otherwise, upon such Event of Default) shall be applied by the Indenture Trustee in reimbursement of such expenses;

second, so much of such payments or amounts remaining as shall be required to reimburse the Note Holders for payments made pursuant to Section 5.03

hereof (to the extent not previously reimbursed) shall be distributed to the Note Holders, and if the aggregate amount remaining shall be insufficient to reimburse all such payments in full, it shall be distributed ratably, without priority of one over any other, in the proportion that the aggregate amount of unreimbursed payments made by each such Note Holder pursuant to said Section 5.03 bears to the aggregate amount of the unreimbursed payments made by all Note Holders pursuant to said Section 5.03;

third, so much of the payments or amounts remaining as shall be required to pay to each Note Holder all other amounts payable pursuant to the indemnification provisions of Section 6.1 or 6.2 of the Participation Agreement or pursuant to any other provision of this Indenture or any Indenture Document and secured hereunder (other than amounts payable pursuant to clause "second", "fourth" or "fifth" of this Section 3.03) to such Note Holder or to its predecessors and remaining unpaid shall be distributed to such holder for distribution to itself and such predecessors, as their interests may appear, and if the aggregate amount remaining shall be insufficient to pay all such amounts in full, such payment or amount shall be distributed ratably, without priority of any Note Holder over any other Note Holder, in the proportion that the aggregate amount due each such Note Holder under this clause "third" bears to the aggregate amount due all such Note Holders under this clause "third";

fourth, so much of such payments or amounts remaining as shall be required to pay in full (i) any Breakage Amount payable hereunder by reason of the acceleration of the Secured Notes by reason of the occurrence after January 2, 2000 of an Event of Default and (ii) all accrued but unpaid interest on the outstanding principal amount of the Secured Notes, shall be distributed to the Note Holders, and if the aggregate amount so to be distributed shall be insufficient to pay all such amounts in full, then such payment or amount shall be distributed ratably, without priority of any Note Holder over any other Note Holder, in the proportion that the aggregate amount thereof owed to each Note Holder bears to the aggregate amount thereof owed to all Note Holders;

fifth, so much of such payments or amounts remaining as shall be required to pay in full the aggregate unpaid principal amount of all Secured Notes then due shall be distributed to the Note Holders, and if the aggregate amount so to be distributed shall be insufficient to pay all such amounts in full, then, such payment or amount shall be distributed ratably, without priority of any Note Holder over any other Note Holder, in the proportion that the aggregate unpaid principal amount of all Secured Notes held by each such Note Holder bears to the aggregate unpaid principal amount of all Secured Notes;

sixth, so much of such payments or amounts remaining as are required to pay in full all then unpaid amounts due to the Owner Trustee or the Owner Participant under the Operative Documents shall be distributed to the Owner Trustee;

seventh, so much of such payments or amounts remaining as shall be required to pay in full (i) an amount equal to all amounts paid by Lessee under Section 2.1 of the Undertaking and Pledge and Security Agreement and not theretofore reimbursed to the Lessee shall be distributed to the Lessee, and (ii) interest on the amounts described in clauses (i) at the Agreed Rate from the date such amounts were paid by the Lessee until paid hereunder;

eighth, so much of such payments or amounts remaining as shall be required to pay any Breakage Amount payable hereunder by reason of the acceleration of the Secured Notes by reason of the occurrence on or before January 2, 2000 of an Event of Default; and

ninth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to the Owner Trustee for distribution pursuant to the Trust Agreement.

The rights of Lessee under clauses "sixth" and "seventh" above shall survive any foreclosure by the Indenture Trustee on the Trust Indenture Estate, including any acquisition of the Trust Estate or any portion thereof by Indenture Trustee, any Note Holder or any agent thereof.

SECTION 3.04. **Certain Payments.** (a) Except as otherwise provided in this Indenture, any payments received by the Indenture Trustee for which provision as to the application thereof is made in the Lease or in any other Operative Document, shall be applied forthwith to the purpose for which such payment was made in accordance with the terms of the Lease or such other Operative Document.

(b) The Indenture Trustee will distribute promptly upon receipt any indemnity or other payment received by it from the Owner Trustee or the Lessee in respect of the Indenture Trustee in its individual capacity or any Note Holder or Loan Participant pursuant to either Section 6.1 or 6.2 of the Participation Agreement, directly to the Person entitled thereto.

(c) Any payment of Rent received by the Owner Participant or the Indenture Trustee pursuant to the third sentence of Section 4.03 hereof shall, so long as no Specified Default or Lease Event of Default under the Lease in respect of any payments of Base Rent, Special Purchase Price, Termination Value or Casualty Value shall have occurred and be continuing and no Indenture Event of Default which is not a Lease Event of Default shall have occurred and be continuing, and except to the extent applied as provided in Section 3.03 hereof, be retained by, or promptly distributed to the Owner Participant.

(d) Notwithstanding anything to the contrary contained in this Article III, any payment received by the Indenture Trustee which constitutes Excluded Payments shall be distributed promptly upon receipt by the Indenture Trustee directly to the Person or Persons entitled thereto.

SECTION 3.05. **Other Payments.** Any payments received by the Indenture Trustee for which no provision as to the application thereof is made in the Lease or in another

Operative Document or elsewhere in this Indenture shall be distributed by the Indenture Trustee (i) to the extent received or realized at any time prior to the payment in full of all obligations to the Note Holders secured by the Lien of this Indenture, in the order of priority specified in Section 3.01 hereof, and (ii) to the extent received or realized at any time after payment in full of all obligations to the Note Holders secured by the Lien of this Indenture, in the following order of priority: first, in the manner provided in clause "first" of Section 3.03 hereof, second, in the manner provided in clause "sixth" of Section 3.03 hereof, third, in the manner provided in clause "seventh" of Section 3.03 hereof, and fourth, in the manner provided in clause "ninth" of Section 3.03.

SECTION 3.06. **Payments to Owner Trustee.** Any amounts distributed hereunder by the Indenture Trustee to the Owner Trustee shall be paid to the Owner Trustee by wire transfer of funds of the type received by the Indenture Trustee at such office and to such account or accounts of such entity or entities as shall be designated by notice from the Owner Trustee to the Indenture Trustee from time to time. The Owner Trustee hereby notifies the Indenture Trustee that unless and until the Indenture Trustee receives notice to the contrary from the Owner Trustee, all amounts to be distributed to the Owner Trustee pursuant to clause "second" of Section 3.01 hereof shall be distributed by wire transfer of funds of the type received by the Indenture Trustee to the Owner Participant.

SECTION 3.07. **Investment of Amounts Held by Indenture Trustee.** (a) Any amounts held by the Indenture Trustee as assignee of the Owner Trustee's rights to hold moneys for security pursuant to Section 7.4 or 8.2 of the Lease shall be held in accordance with the terms of such Section; and the Indenture Trustee hereby agrees to perform the duties of the Owner Trustee under such Section.

(b) Any amounts held by the Indenture Trustee pursuant to the proviso to the first sentence of Section 3.01 hereof, pursuant to Section 3.02 hereof, or pursuant to the fourth sentence of Section 4.03 hereof or pursuant to Section 7.4 or 8.2 of the Lease shall be invested by the Indenture Trustee from time to time in Permitted Investments selected by the Owner Trustee (or, to the extent contemplated by said Section 7.4 or 8.2, the Lessee) if such investments are reasonably available. Unless otherwise expressly provided in this Indenture, any income realized as a result of any such investment and any payments by the Lessee pursuant to the Lease in respect of any losses or expenses, net of the Indenture Trustee's reasonable fees and expenses in making such investment, shall be held and applied by the Indenture Trustee in the same manner as the principal amount of such investment is to be applied and any losses, net of earnings and such reasonable fees and expenses, shall be charged against the principal amount invested. The Indenture Trustee shall not be liable for any loss resulting from any investment required to be made by it under this Indenture other than by reason of its willful misconduct or gross negligence (or simple negligence in connection with the handling of funds), and any such investment may be sold (without regard to its maturity) by the Indenture Trustee without instructions whenever the Indenture Trustee reasonably believes such sale is necessary to make a distribution required by this Indenture.

(c) Unless otherwise confirmed in writing, an account statement delivered by the Indenture Trustee to the Owner Trustee (with a copy to the Lessee) shall be deemed written confirmation by the Owner Trustee that the investment transactions identified therein accurately reflect the investment directions given to the Indenture Trustee by or on behalf of the Owner Trustee, unless the Owner Trustee (or the Lessee on its behalf) notifies the Indenture Trustee in writing to the contrary within 30 days of the date of receipt of such statement.

SECTION 3.08. Distribution of Excluded Payments. Notwithstanding anything to the contrary in this Article III, all amounts constituting Excluded Payments received by the Indenture Trustee shall be paid by the Indenture Trustee forthwith to the Person or Persons entitled thereto.

ARTICLE IV

COVENANTS OF OWNER TRUSTEE; EVENTS OF DEFAULT; REMEDIES OF INDENTURE TRUSTEE

SECTION 4.01. Covenants of Owner Trustee. (a) The Owner Trustee, in its individual capacity, hereby covenants and agrees that it will not directly or indirectly create, incur, assume or suffer to exist any Lessor's Liens attributable to it in its individual capacity with respect to any of the properties or assets of the Trust Indenture Estate.

(b) The Owner Trustee hereby covenants and agrees as follows:

(i) the Owner Trustee will duly and punctually pay the principal of, Breakage Amount, if any, and interest on and other amounts due under the Secured Notes and hereunder in accordance with the terms of the Secured Notes and this Indenture, and perform all of its other obligations and covenants under the Operative Documents to which it is a party;

(ii) the Owner Trustee will perform each of its covenants set forth in Section 9 of the Participation Agreement;

(iii) in the event a Responsible Officer in the Corporate Trust Administration of the Trust Company shall have actual knowledge of an Event of Default or Default or a Casualty Occurrence, the Owner Trustee will give prompt written notice of such Event of Default or Default or Casualty Occurrence to the Indenture Trustee, the Lessee, the Owner Participant and each Note Holder (with the understanding that the Owner Trustee shall be able to conclusively rely on the Note Register maintained by the Indenture Trustee pursuant to Section 2.09 hereof and that the Owner Trustee shall incur no liability for or in respect of errors or inaccuracy in such Note Register);

(iv) the Owner Trustee will furnish to each Note Holder at the time outstanding and to the Indenture Trustee, promptly upon receipt thereof, true and correct duplicates or copies of all reports, notices, requests, demands, certificates, financial

statements and other instruments furnished to the Owner Trustee under the Lease, including, without limitation, a copy of each report or notice received pursuant to Section 8 of the Participation Agreement, to the extent that the same shall not have been furnished to such holder or the Indenture Trustee pursuant to the Lease (with the understanding that the Owner Trustee shall be able to conclusively rely on the Note Register maintained by the Indenture Trustee pursuant to Section 2.09 hereof and that the Owner Trustee shall incur no liability for or in respect of errors or inaccuracy in such Note Register);

(v) except as contemplated by the Operative Documents or with the consent of the Indenture Trustee (acting pursuant to instructions given in accordance with Section 9.01 hereof) the Owner Trustee will not contract for, create, incur, assume or suffer to exist any Debt, and will not guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing, or otherwise), endorse or otherwise be or become contingently liable, directly or indirectly, in connection with the Debt of any other person;

(vi) the Owner Trustee will not enter into any business or other activity other than the business of owning the Equipment, the leasing thereof to the Lessee and the carrying out of the transactions contemplated hereby, and by the Lease, the Participation Agreement, the Trust Agreement and the other Operative Documents;

(vii) not to acquire any Secured Note from any Loan Participant other than pursuant to an offer made to all Loan Participants on identical terms and conditions; and

(viii) not to commence or join in a petition to commence a bankruptcy or similar proceeding against Lessee.

SECTION 4.02. Event of Default. "Event of Default" means any of the following events (whatever the reason for such Event of Default and whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) any Lease Event of Default (other than in respect of any Excluded Payments, unless the Owner Participant shall agree in writing to treat such failure as an Event of Default); or

(b) the failure of the Owner Trustee to pay when due any payment of principal of, Breakage Amount, if any, or interest on any Secured Note and such failure shall have continued unremedied for five (5) Business Days; or the failure of the Owner Trustee to pay when due and payable any other amount due and payable by Owner Trustee to any Note Holder or the Indenture Trustee under any Secured Note or any other Operative Document and such failure shall have continued unremedied for ten (10) Business days after notice thereof unless, in

either case, such failure results from the failure of the Lessee to make any payments pursuant to the Lease; or

(c) any Lessor's Liens required to be discharged by the Owner Participant or the Owner Trustee, in its individual capacity, pursuant to Section 9 of the Participation Agreement or, in the case of the Owner Trustee, in its individual capacity, pursuant to Section 4.01(a) hereof, shall remain undischarged for a period of thirty (30) calendar days after Owner Trustee or Owner Participant shall have actual knowledge of the existence of any such Lessor's Liens or notice thereof is given by the Indenture Trustee to the Owner Trustee and the Owner Participant; or

(d) any representation or warranty made by the Owner Participant, the Owner Trustee, in its individual capacity or as the Owner Trustee, herein or in the Participation Agreement or in any Assumption Agreement or by the Owner Participant Guarantor in any Owner Participant Guaranty or in any certificate furnished on the Closing Date by the Owner Participant or the Owner Trustee either to the Indenture Trustee or any Note Holder in connection with the transactions contemplated by the Operative Documents shall prove to have been false or incorrect or misleading when made in any material respect to the Note Holders, shall remain material to the Note Holders at the date of the notice referred to below; and if such default is capable of being corrected as of a subsequent date and if such correction is being sought diligently, such default shall not have been corrected as of a day within thirty (30) calendar days following notice thereof being given to the Owner Trustee and the Owner Participant; or

(e) (i) any failure of the Owner Trustee to observe any of its covenants or agreements in the fourth paragraph following the Habendum Clause hereof or in clauses (b)(v) and (b)(vi) of Section 4.01 hereof, (ii) any failure by the Owner Trustee, in its individual capacity, to observe or perform any of its covenants in Section 9 of the Participation Agreement, or (iii) any failure by the Owner Participant to observe or perform any of its covenants in Section 9 of the Participation Agreement; or

(f) any repudiation by any Owner Participant Guarantor of its obligations under any Owner Participant Guaranty; or

(g) any failure by the Owner Trustee to observe or perform any other covenant or obligation of the Owner Trustee for the benefit of the Note Holders or the Indenture Trustee contained in this Indenture, the Participation Agreement or any other Operative Document or any failure by the Owner Participant to observe or perform any other covenant or obligation of the Owner Participant for the benefit of the Note Holders or the Indenture Trustee contained in the Participation Agreement or any other Operative Document (other than the Tax Indemnity Agreement), which failure is not remedied within a period of thirty (30) calendar days after notice thereof has been given to the Owner Trustee and the Owner Participant; or

(h) either the Trust Estate or the Owner Trustee with respect thereto (and not in its individual capacity), the Owner Participant or any Owner Participant Guarantor shall (i) file, or consent by answer or otherwise to the filing against it of a petition for relief or

reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (ii) make an assignment for the benefit of its creditors, (iii) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or any substantial part of its property, (iv) shall admit in writing its inability to pay its debts generally as they become due, or (v) shall take any corporate action to authorize any of the foregoing; or

(i) the commencement of an involuntary case or other proceeding in respect of the Owner Participant, any Owner Participant Guarantor, the Trust Estate or the Owner Trustee in an involuntary case under the federal bankruptcy laws, now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law in the United States or seeking the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Owner Participant, any Owner Participant Guarantor, the Trust Estate or the Owner Trustee of all or substantially all of its property, or seeking the winding-up or liquidation of its affairs and the continuation of any such case or other proceeding undismissed and unstayed for a period of ninety (90) consecutive days or a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by the Trust Estate or the Owner Trustee with respect thereto (and not in its individual capacity) or the Owner Participant or any Owner Participant Guarantor, as the case may be, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Trust Estate or the Owner Trustee with respect thereto (and not in its individual capacity) or the Owner Participant or any Owner Participant Guarantor, as the case may be, and any such order or petition is not dismissed or stayed within ninety (90) days after the earlier of the entering of any such order or the approval of any such petition; or

(j) Owner Trustee or Owner Participant shall take any action which causes the lien and security interest of this Indenture to cease to constitute a valid and perfected lien and security interest on the Trust Indenture Estate.

SECTION 4.03. Certain Rights. In the event of any default by the Lessee in the payment of any installment of Base Rent due under the Lease, the Owner Participant may, within ten Business Days after notice to the Owner Participant of such default from the Indenture Trustee, without the consent or concurrence of any Note Holder, pay, as provided in Section 2.06 hereof, for application in accordance with Section 3.01 hereof a sum equal to the amount of all (but not less than all) of the principal and interest as shall then (without regard to any acceleration pursuant to Section 4.04(b) or (c) hereof) be due and payable on the Secured Notes. In the event of any default by the Lessee in any obligation under the Lease other than the payment of Base Rent, the Owner Participant may, within ten (10) Business Days after notice to the Owner Participant of such default being an Event of Default from the Indenture Trustee, without the consent or concurrence of any holder of any Secured Note, instruct the Owner Trustee to exercise the Owner Trustee's rights under Section 19 of the Lease to perform such obligation on behalf of the Lessee. Solely for the purpose of determining whether there exists an

Event of Default, (a) any payment by the Owner Participant pursuant to, and in compliance with, the first sentence of this Section 4.03 shall be deemed to remedy (but solely for the purposes of this Indenture) any default by the Lessee in the payment of installments of Base Rent, as the case may be, theretofore due and payable and to remedy any default by the Owner Trustee in the payment of any amount due and payable under the Secured Notes or hereunder, and (b) any performance by the Owner Trustee of any obligation of the Lessee under the Lease pursuant to, and in compliance with, the second sentence of this Section 4.03 shall be deemed to remedy any Lease Event of Default to the same extent that like performance by the Lessee itself would have remedied such Lease Event of Default (but any such payment or performance shall not relieve the Lessee of its duty to pay all Rent and perform all of its obligations pursuant to the Lease). If, on the basis specified in the preceding sentence, such Lease Event of Default shall have been remedied, then any declaration pursuant to Section 13.2 of the Lease that the Lease is in default, and any declaration pursuant to this Indenture that the Secured Notes are due and payable or that an Event of Default exists hereunder, based upon such Lease Event of Default, shall be deemed to be rescinded, and the Owner Participant shall (to the extent of any such payments made by it) be subrogated to the rights of the Note Holders hereunder to receive such payment of Base Rent or Supplemental Rent from the Indenture Trustee (and the payment of interest on account of such Rent being overdue), and shall be entitled, so long as no other Event of Default shall have occurred or would result therefrom, to receive such payment upon receipt thereof by the Indenture Trustee; provided that the Owner Participant shall not otherwise attempt to recover any such amount paid by it on behalf of the Lessee pursuant to this Section 4.03 except by demanding of the Lessee payment of such amount, or by commencing an action at law against the Lessee for the payment of such amount or taking appropriate action in a pending action at law against the Lessee; provided further, however, that at no time while an Event of Default shall have occurred and be continuing shall any such demand be made or shall any such action be commenced (or continued), and any amounts nevertheless received by the Owner Participant in respect thereof shall be held in trust for the benefit of, and promptly paid to, the Indenture Trustee for distribution as provided in Section 3.03 or 3.04(c) hereof, as the case may be; and further provided, that

(x) this Section 4.03 shall not apply with respect to any cure of any default in the payment of Base Rent due under the Lease, if such cure shall have been effected with respect to (A) each of the three (3) Base Rent payment dates immediately preceding the date of such default or (B) more than six (6) Base Rent payment dates, and

(y) neither the Owner Trustee nor the Owner Participant shall (without the prior written consent of the Majority in Interest of Note Holders) have the right to cure any Lease Default or Lease Event of Default except as specified in this Section 4.03.

provided further that Lessee may, so long as no Specified Default or Event of Default shall exist and be continuing, reimburse the Owner Participant for any payments made by the Owner Participant to cure any Lease Event of Default as permitted by this Section 4.03.

SECTION 4.04. **Remedies.** (a) If an Event of Default shall have occurred and be continuing and so long as the same shall be continuing unremedied, then and in every such

case the Indenture Trustee may, subject to Section 4.03 hereof and to the extent consistent with the third and fourth sentences of this Section 4.04(a), exercise any or all of the rights and powers and pursue any and all of the remedies pursuant to this Article IV and shall have and may exercise all of the rights and remedies of a secured party under the Uniform Commercial Code and, in the event such Event of Default is an Event of Default referred to in paragraph (a) of Section 4.02 hereof, any and all of the remedies pursuant to Section 13.2 of the Lease and may take possession of all or any part of the properties covered or intended to be covered by the Lien and security interest created hereby or pursuant hereto (but, in the case of the Equipment, only as permitted by Section 13.2 of the Lease) and may exclude the Owner Participant, the Owner Trustee and the Lessee and all persons claiming under any of them wholly or partly therefrom. Without limiting any of the foregoing, it is understood and agreed that the Indenture Trustee may exercise any right of sale of the Equipment available to it, even though it shall not have taken possession of the Equipment and shall not have possession thereof at the time of such sale. It is further agreed and understood that if the Indenture Trustee shall proceed to foreclose the Lien of this Indenture, it shall, if it has not already done so, accelerate the Notes under Section 4.04 (c) and, to the extent the Indenture Trustee is then entitled to do so hereunder and under the Lease, and is not then stayed or otherwise prevented from doing so by operation of law, proceed (to the extent it has not already done so) declare the Lease in default (if not deemed to be in default) and attempt to exercise one or more of the material remedies referred to in Section 13.2 of the Lease (as it shall determine in its good faith discretion); provided that, during any period with respect to which the Indenture Trustee is stayed or otherwise prevented from exercising one or more of the remedies referred to in Section 13.2 of the Lease, the Indenture Trustee shall not foreclose the Lien of this Indenture, if and so long as (A) such stay or other prohibition shall remain in effect, until the earlier of (i) the expiration of the 60-day period (or such longer period as may then be in effect under Section 1168 of the Bankruptcy Code) from the date of the order for relief under Chapter 11 of the Bankruptcy Code, in respect of Lessee's bankruptcy as provided in Section 1168 of the Bankruptcy Code, as such period may be extended by agreement between the Indenture Trustee (as assignee of the Owner Trustee under the Lease) and the bankruptcy trustee or debtor-in-possession pursuant to Section 1168 thereof or (ii) the date of repossession of the Equipment from the Lessee under or pursuant to the Lease or (B) the Lease has been affirmed with the approval of the bankruptcy court, under Section 365 of the Bankruptcy Code within the period referred to in (A) above. For the avoidance of doubt, it is expressly understood and agreed that the limitation on the ability of the Indenture Trustee to exercise any right or remedy under the Lease described in the proviso to the preceding sentence of this Section 4.04(a) and the limitation on the ability of the Indenture Trustee to foreclose the Lien of the Indenture described in the preceding sentence of this Section 4.04(a) shall not (i) except as otherwise expressly provided in such preceding sentence, prevent the Indenture Trustee from exercising all of its rights, powers and remedies under this Indenture, including without limitation this Article IV, nor (ii) be construed so as to restrict the Indenture Trustee from declaring the Secured Notes to be due and payable in accordance with the provisions of clauses (b) and/or (c) of this Section 4.04).

(b) If an Event of Default referred to in clause (h) or (i) of Section 4.02 hereof shall have occurred, or a Lease Event of Default of the type referred to in clause (h) or (i) of said Section 4.02 shall have occurred with respect to the Lessee then and in every such case the

unpaid principal of all Secured Notes then outstanding, together with interest accrued but unpaid thereon, (but with Breakage Amount, if any) and all other amounts due thereunder and hereunder, shall immediately and without further act become due and payable, without presentment, demand, protest or notice, all of which are hereby waived.

(c) If any other Event of Default shall have occurred and be continuing, then and in every such case the Indenture Trustee (i) may, by written notice or notices to the Owner Trustee (with a copy to the Lessee), declare all the Secured Notes to be due and payable, whereupon the unpaid principal of all Secured Notes then outstanding, together with accrued but unpaid interest thereon, (but without any Breakage Amount in the case of an Event of Default arising as a result of a Lease Event of Default under Sections 13.1(i), 13.1(ii), 13.1(iii) or 13.1(xi) of the Lease, but with Breakage Amount in all other cases) and other amounts due thereunder, shall immediately become due and payable without presentment, demand, protest or notice, all of which are hereby waived and (ii) shall, upon the request of the Majority in Interest of Note Holders by written notice or notices to the Owner Trustee (with a copy to the Lessee), declare all the Secured Notes to be due and payable, whereupon the unpaid principal of all Secured Notes then outstanding, together with accrued but unpaid interest thereon, and other amounts due thereunder, shall immediately become due and payable without presentment, demand, protest or notice, all of which are hereby waived.

(d) The Note Holders shall be entitled, at any sale pursuant to Section 13.2 of the Lease, to credit against any purchase price bid at such sale by such Note Holder all or any part of the unpaid obligations owing to such Note Holder and secured by the Lien of this Indenture.

SECTION 4.05. Return of Equipment, etc. (a) If an Event of Default shall have occurred and be continuing, at the request of the Indenture Trustee the Owner Trustee shall promptly execute and deliver to the Indenture Trustee such instruments of title and other documents as the Indenture Trustee may deem necessary or advisable to enable the Indenture Trustee or an agent or representative designated by the Indenture Trustee, at such time or times and place or places as the Indenture Trustee may specify, to obtain possession of all or any part of the Indentured Property included in the Trust Indenture Estate to which the Indenture Trustee shall at the time be entitled hereunder. If the Owner Trustee shall for any reason fail to execute and deliver such instruments and documents after such request by the Indenture Trustee, the Indenture Trustee may (i) obtain a judgment conferring on the Indenture Trustee the right to immediate possession and requiring the Owner Trustee to execute and deliver such instruments and documents to the Indenture Trustee, to the entry of which judgment the Owner Trustee hereby specifically consents to the fullest extent it may lawfully do so, and (ii) to the extent permitted by law, pursue all or part of such Indentured Property wherever it may be found (but not in violation of the Lease) and may enter any of the premises of the Lessee wherever such Indentured Property may be or be supposed to be and search for such Indentured Property and take possession of and remove such Indentured Property (but not in violation of the Lease). All expenses of obtaining such judgment or of pursuing, searching for and taking such property shall, until paid, be secured by the Lien of this Indenture.

(b) Upon every such taking of possession, the Indenture Trustee may, from time to time, at the expense of the Trust Indenture Estate, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Indentured Property, as it may deem proper. In each such case, the Indenture Trustee shall have the right to maintain, use, operate, store, lease, control or manage the Indentured Property and to carry on the business and to exercise all rights and powers of the Owner Participant and the Owner Trustee relating to the Indentured Property, as the Indenture Trustee shall deem best, including the right to enter into any and all such agreements with respect to the maintenance, insurance, use, operation, storage, leasing, control, management or disposition of the Indentured Property or any part thereof as the Indenture Trustee may determine; and the Indenture Trustee shall be entitled to collect and receive directly all tolls, rents (including Rent), revenues, issues, income, products and profits of the Indentured Property and every part thereof except Excluded Payments, without prejudice, however, to the right of the Indenture Trustee under any provision of this Indenture to collect and receive all cash held by, or required to be deposited with, the Indenture Trustee hereunder. Such tolls, rents (including Rent), revenues, issues, income, products and profits shall be applied to pay the expenses of the use, operation, storage, leasing, control, management or disposition of the Indentured Property and of conducting the business thereof, and of all maintenance, repairs, replacements, alterations, additions and improvements, and to make all payments which the Indenture Trustee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Indentured Property or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Owner Trustee), and all other payments which the Indenture Trustee may be required or authorized to make under any provision of this Indenture, as well as just and reasonable compensation for the services of the Indenture Trustee, and of all Persons properly engaged and employed by the Indenture Trustee.

(c) If any Event of Default which is the subject of this Section 4.05 results solely from a Lease Event of Default, the Indenture Trustee will consult in good faith with the Owner Trustee regarding maintenance of the Equipment. The Indenture Trustee shall give the Owner Trustee prior notice of its commencement of any foreclosure.

SECTION 4.06. Remedies Cumulative. Each and every right, power and remedy given to the Indenture Trustee specifically or otherwise in this Indenture shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Indenture Trustee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Indenture Trustee in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Owner Trustee or the Lessee or to be an acquiescence therein. The Owner Trustee hereby waives any stay or extension law or any law which would prohibit or forgive the Owner Trustee from making payments under the Secured Notes.

SECTION 4.07. Discontinuance of Proceedings. In case the Indenture Trustee shall have instituted any proceeding to enforce any right, power or remedy under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Indenture Trustee, then and in every such case the Owner Trustee, the Indenture Trustee and the Lessee shall, subject to any determination in such proceedings, be restored to their former positions and rights hereunder with respect to the Indentured Property, and all rights, remedies and powers of the Indenture Trustee shall continue as if no such proceedings had been instituted. Without limiting the generality of the foregoing, if all proceedings shall have been permanently discontinued or abandoned and no Event of Default shall then be continuing, any acceleration of the Secured Notes pursuant to Section 4.04(b) or 4.04(c) hereof shall be deemed to be rescinded or annulled.

SECTION 4.08. Waiver of Past Defaults. Upon written instructions from a Majority in Interest of Note Holders, the Indenture Trustee shall waive any past default hereunder and its consequences and upon any such waiver such default shall cease to exist and any Event of Default (as well as any Lease Event of Default giving rise to such Event of Default) arising therefrom shall be deemed to have been cured for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon; provided, however, that in the absence of written instructions from the holders of all Secured Notes then outstanding, the Indenture Trustee shall not, except as otherwise provided in the last sentence of Section 5.01(a) hereof, waive any default (i) in the payment of the principal of, Breakage Amount, if any, or interest on, or other amounts due under, any Secured Note then outstanding, or (ii) in respect of a covenant or provision hereof which, under Article IX hereof, cannot be modified or amended without the consent of each holder of a Secured Note then outstanding.

ARTICLE V

DUTIES OF THE INDENTURE TRUSTEE

SECTION 5.01. (a) Notice of Event of Default. In the event the Indenture Trustee shall have knowledge of an Event of Default, or shall have knowledge of a Default arising from a failure to pay Rent, the Indenture Trustee shall give prompt written notice thereof to the Owner Trustee, the Owner Participant, each Note Holder and the Lessee. Subject to the terms of Sections 4.03, 4.04, 4.08, 5.03, 6.10 and 10.05 hereof, the Indenture Trustee shall take such action, or refrain from taking such action, with respect to such Event of Default or Default (including with respect to the exercise of any rights or remedies hereunder) as the Indenture Trustee shall be instructed in writing by the Majority in Interest of Note Holders. Subject to the provisions of Section 5.03, if the Indenture Trustee shall not have received instructions as above provided within 20 calendar days after mailing notice of such Default or Event of Default to the Note Holders, the Indenture Trustee may, subject to instructions thereafter received pursuant to the preceding provisions of this Section 5.01, take such action, or refrain from taking such action, but shall be under no duty to take or refrain from taking any action, with respect to such Default or Event of Default as it shall determine advisable in the best interests of the Note Holders and

shall use the same degree of care and skill in connection therewith as a prudent person would use under the circumstances in the conduct of his or her affairs; provided that the Indenture Trustee may not sell the Equipment without the consent of the Majority in Interest of Note Holders. In the event the Indenture Trustee shall at any time declare the Lease to be in default pursuant to Section 13.2 thereof or shall elect to foreclose or otherwise enforce this Indenture, the Indenture Trustee in its discretion may, or upon receipt of a written demand therefor from a Majority in Interest of Note Holders shall, declare the unpaid principal amount of all Secured Notes then outstanding with the accrued interest thereon, and other amounts due thereunder to be immediately due and payable, upon which declaration such principal amount and such accrued interest, and other amounts due thereunder shall immediately become due and payable without further act or notice of any kind. In the event the Indenture Trustee shall at any time declare the Lease to be in default pursuant to Section 13.2 thereof or shall elect to foreclose or otherwise enforce this Indenture, the Indenture Trustee shall forthwith notify the Owner Participant, the Note Holders, the Owner Trustee and the Lessee. For all purposes of this Indenture, in the absence of actual knowledge on the part of an officer in the Corporate Trust Office, in the case of the Indenture Trustee, or its Corporate Trust Administration, in the case of the Owner Trustee, the Indenture Trustee or the Owner Trustee, as the case may be, shall not be deemed to have knowledge of an Event of Default (except, in the case of the Indenture Trustee, the failure of the Lessee to pay any installment of Base Rent as the same shall become due, if any portion of such installment was then required to be paid to the Indenture Trustee, which failure shall constitute knowledge of a Default for purposes of the first sentence of this Section 5.01) unless notified in writing by the Lessee, the Owner Trustee or one or more holders of Secured Notes. This Section 5.01, however, is subject to the condition that, if at any time after the principal of the Secured Notes shall have become so due and payable, and before any judgment or decree for the payment of the money so due, or any thereof, shall be entered, all overdue payments of interest upon the Secured Notes and all other amounts payable under the Secured Notes (except the principal of the Secured Notes which by such declaration shall have become payable) shall have been duly paid, and every other Default and Event of Default with respect to any covenant or provision of this Indenture shall have been cured, then and in every such case a Majority in Interest of Note Holders may (but shall not be obligated to), by written instrument filed with the Indenture Trustee, rescind and annul the Indenture Trustee's declaration and its consequences; but no such rescission or annulment shall extend to or affect any subsequent default or Event of Default or impair any right consequent thereon.

(b) **Other Notices.** The Indenture Trustee will furnish to each Note Holder at the time outstanding promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to the Indenture Trustee under any Operative Document or received from the Owner Trustee pursuant to Section 4.01(b)(iv) hereof to the extent the same shall not have been otherwise directly distributed to such Note Holders pursuant to the express provision of any other Operative Document.

SECTION 5.02. Action Upon Instructions. (a) Subject to the terms of Sections 4.03, 4.04, 4.08, 5.01, 5.03, 6.10 and 10.05 hereof and Article IX hereof, upon the written instructions at any time and from time to time of a Majority in Interest of Note Holders, the

Indenture Trustee shall take such of the following actions as may be specified in such instructions: (i) exercise such election or option, or make such decision or determination, or give such notice, consent, waiver or approval or exercise such right, remedy or power or take such other action hereunder or under any other Indenture Document or in respect of any part or all of the Trust Indenture Estate as shall be specified in such instructions; (ii) take such action with respect to, or to preserve or protect, the Trust Indenture Estate (including the discharge of Liens) as shall be specified in such instructions and as are consistent with this Indenture; and (iii) take such other action in respect of the subject matter of this Indenture as is consistent with the terms hereof and the other Indenture Documents. The Indenture Trustee will execute and file or cause to be filed such continuation statements with respect to financing statements relating to the security interest created hereunder in the Trust Indenture Estate (A) as may be delivered to the Indenture Trustee by the Lessee pursuant to Section 18 of the Lease and (B) as may be specified from time to time in written instructions of a Majority in Interest of Note Holders (which instructions may, by their terms, be operative only at a future date and which shall be accompanied by the execution form of such continuation statement so to be filed).

(b) If any Lease Event of Default shall have occurred and be continuing and the Owner Participant shall have failed to cure or to utilize its rights to cure such Lease Event of Default under or in accordance with Section 4.03 hereof, on request of a Majority in Interest of Note Holders and subject to Section 4.04(a) hereof, the Indenture Trustee shall exercise such remedies under Section 13.2 of the Lease as shall be specified in such request. The Indenture Trustee agrees to provide to the Note Holders, the Owner Trustee and the Owner Participant concurrently with such exercise by the Indenture Trustee, notice of such exercise by the Indenture Trustee; provided, that the failure to give any such notice to such Note Holders, the Owner Trustee or the Owner Participant does not affect the validity of such action.

SECTION 5.03. **Indemnification.** The Indenture Trustee shall not be required to take any action or refrain from taking any action under Section 5.01 (other than the first sentence thereof) or 5.02 or Article IV hereof unless the Indenture Trustee shall have been indemnified against any liability, cost or expense (including counsel fees and expenses) which may be incurred in connection therewith. The Indenture Trustee shall not be under any obligation to take any action under this Indenture and nothing in this Indenture contained shall require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Indenture Trustee shall not be required to take any action under Section 5.01 (other than the first sentence thereof) or 5.02 or Article IV hereof, nor shall any other provision of this Indenture be deemed to impose a duty on the Indenture Trustee to take any action, if the Indenture Trustee shall have been advised by counsel that such action is contrary to the terms hereof or is otherwise contrary to law.

SECTION 5.04. **No Duties Except as Specified in Indenture or Instructions.** The Indenture Trustee shall not have any duty or obligation to use, operate, store, lease, control, manage, sell, dispose of or otherwise deal with the Equipment or any other part of the Trust Indenture Estate, or to otherwise take or refrain from taking any action under, or in connection

with, this Indenture or any part of the Trust Indenture Estate, except as expressly provided by the terms of this Indenture or as expressly provided in written instructions from Note Holders as provided in this Indenture; and no implied duties or obligations shall be read into this Indenture against the Indenture Trustee. The Indenture Trustee agrees that it will, in its individual capacity and at its own cost and expense (but without any right of indemnity in respect of any such cost or expense under Article VII hereof) promptly take such action as may be necessary to duly discharge all Liens on any part of the Trust Indenture Estate which result from claims against it in its individual capacity not related to the Equipment or the administration of the Trust Indenture Estate or any other transaction pursuant to this Indenture or any document included in the Trust Indenture Estate.

SECTION 5.05. No Action Except Under Lease, Indenture or Instructions.

The Owner Trustee and the Indenture Trustee agree that they will not use, operate, store, lease, control, manage, sell, dispose of or otherwise deal with the Equipment or any other part of the Trust Indenture Estate except (i) as required or permitted by the terms of the Lease or the Participation Agreement or (ii) in accordance with the powers granted to, or the authority conferred upon, the Owner Trustee and the Indenture Trustee pursuant to this Indenture and in accordance with the express terms hereof.

SECTION 5.06. Replacement Unit(s). In the event of a Replacement Unit being substituted as specified in Section 7.2 of the Lease, the Owner Trustee and the Indenture Trustee agree for the benefit of the Note Holders and the Lessee, subject to fulfillment of the conditions precedent and compliance by the Lessee with its obligations set forth in Section 7.2 of the Lease, as the case may be, to execute and deliver a Trust Agreement and Indenture Supplement and Lease Supplement as contemplated by such Section(s) of the Lease, promptly upon receipt by the Indenture Trustee of a written request specifically describing the Unit(s) to be so released, and promptly to execute and deliver to the Lessee an appropriate instrument, in due form for recording, releasing the Unit(s) being replaced from the Lien of this Indenture. Upon a Casualty Occurrence with respect to one or more Units, upon tender by the insurers of the Casualty Value payable with respect thereto pursuant to Section 7 of the Lease, the Indenture Trustee agrees for the benefit of the Owner Trustee and the Lessee that it shall promptly execute and deliver as directed by the Owner Trustee an appropriate instrument, in due form for recording, releasing the Unit(s) in respect of which such payment was made from the Lien of this Indenture.

SECTION 5.07. Effect of Replacement. In the event of the substitution of a Replacement Unit as contemplated by Section 7 of the Lease and, in each case, Section 5.06 hereof, all provisions of this Indenture relating to the Unit(s) being replaced shall be applicable to such Replacement Unit(s) with the same force and effect as if such Replacement Unit(s) were the same unit as the Unit being replaced but for the Casualty Occurrence with respect to the Unit(s) being replaced.

SECTION 5.08. Notices; etc. The Indenture Trustee shall deliver to each Note Holder, promptly upon receipt thereof, duplicates or copies of all notices, requests, financial statements, opinions and other instruments received by it in connection with the Indentured

Property or under or pursuant to any Operative Document, to the extent that the same shall not have been required to be furnished pursuant thereto or hereto to such holders.

ARTICLE VI

THE OWNER TRUSTEE AND THE INDENTURE TRUSTEE

SECTION 6.01. **Acceptance of Trusts and Duties.** The Indenture Trustee accepts the duties hereby created and applicable to it and agrees to perform the same but only upon the terms of this Indenture and agrees to receive and disburse all moneys constituting part of the Trust Indenture Estate in accordance with the terms hereof. The Indenture Trustee shall not be answerable or accountable under any circumstances, except for its own willful misconduct or gross negligence (or simple negligence in connection with the handling of funds), except as provided in the third sentence of Section 2.06 hereof or in the last sentence of Section 5.04 hereof or, except for liabilities that may result from the inaccuracy of any representation or warranty of the Indenture Trustee in Section 4.2(iv) of the Participation Agreement or any other document. Neither the Trust Company nor the Owner Trustee shall be deemed to be a trustee for the holders of the Secured Notes for any purpose.

SECTION 6.02. **Absence of Duties.** In the case of the Indenture Trustee, except in accordance with written instructions furnished pursuant to Section 5.01, 5.02 or 9.01 hereof, and except as provided in, and without limiting the generality of, Sections 5.03 and 5.04 hereof and, in the case of the Owner Trustee, except as provided in Section 4.01(b) or 9.01 hereof, the Owner Trustee and the Indenture Trustee shall have no duty (i) to see to any registration of the Equipment or any recording or filing of the Lease or of this Indenture or any other document, or to see to the maintenance of any such registration, recording or filing, (ii) to see to any insurance on the Equipment, whether or not the Lessee shall be in default with respect thereto, (iii) to see to the payment or discharge of any Lien of any kind against any part of the Trust Estate or the Trust Indenture Estate, (iv) to confirm, verify or inquire into the failure to receive any financial statements of the Lessee or (v) to inspect the Equipment at any time or ascertain or inquire as to the performance or observance of any of the Lessee's covenants under the Lease with respect to the Equipment.

SECTION 6.03. **No Representations or Warranties as to Equipment or Documents.** NEITHER THE INDENTURE TRUSTEE NOR THE OWNER TRUSTEE MAKES OR SHALL BE DEEMED TO HAVE MADE, AND EACH HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, COMPLIANCE WITH SPECIFICATIONS, CONDITION, DESIGN, QUALITY, DURABILITY, OPERATION, MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE OF THE EQUIPMENT, OR ANY PART THEREOF, AS TO ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, OR ANY OTHER REPRESENTATION OR WARRANTY

WITH RESPECT TO THE EQUIPMENT, OR ANY PART THEREOF WHATSOEVER, except that the Owner Trustee in its individual capacity warrants that (i) on the Closing Date the Owner Trustee shall have received whatever interest was conveyed to it by Manufacturer subject to the rights of the parties to the Indenture Documents, and (ii) the Equipment shall be free and clear of Lessor's Liens attributable to the Owner Trustee in its individual capacity. Neither the Owner Trustee nor the Indenture Trustee makes or shall be deemed to have made any representation or warranty as to the validity, legality or enforceability of this Indenture, the Trust Agreement, the Secured Notes or any Indenture Documents or as to the correctness of any statement contained in any thereof, except for the representations and warranties of the Owner Trustee and the Indenture Trustee made in their respective individual capacities, under this Indenture or in the Participation Agreement. The Owner Participant makes no representation or warranty hereunder whatsoever.

SECTION 6.04. No Segregation of Moneys; No Interest Any moneys paid to or retained by the Indenture Trustee pursuant to any provision hereof and not then required to be distributed to any Note Holder, the Lessee or the Owner Trustee as provided in Article III hereof need not be segregated in any manner except to the extent required by law, and may be deposited under such general conditions as may be prescribed by law, and the Indenture Trustee shall not (except as otherwise provided in Section 3.07 hereof) be liable for any interest thereon, provided that any payments received or applied hereunder by the Indenture Trustee shall be accounted for by the Indenture Trustee so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof.

SECTION 6.05. Reliance; Agents; Advice of Counsel Neither the Owner Trustee nor the Indenture Trustee shall incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Owner Trustee and the Indenture Trustee may accept a copy of a resolution of the Board of Directors of any party to the Participation Agreement, certified by the Secretary or an Assistant Secretary thereof as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted and that the same is in full force and effect. As to the aggregate unpaid principal amount of Secured Notes outstanding as of any date, the Owner Trustee may for all purposes hereof rely on a certificate signed by any Vice President or other authorized corporate trust officer of the Indenture Trustee. As to any fact or matter relating to the Lessee the manner of ascertainment of which is not specifically described herein, the Owner Trustee and the Indenture Trustee may for all purposes hereof rely on a certificate, signed by a duly authorized officer of the Lessee, as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee and the Indenture Trustee for any action taken or omitted to be taken by them in good faith in reliance thereon. The Indenture Trustee shall assume, and shall be fully protected in assuming, that the Owner Trustee is authorized by the Trust Agreement to enter into this Indenture and to take all action to be taken by it pursuant to the provisions hereof, and shall not inquire into the authorization of the Owner Trustee with respect thereto. In the administration of the trusts hereunder, the Indenture Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may, at the expense of the Trust Indenture Estate, consult with

counsel, accountants and other skilled persons to be selected and retained by it, and the Indenture Trustee shall not be liable for anything done, suffered or omitted in good faith by them in accordance with the written advice or written opinion of any such counsel, accountants or other skilled persons.

SECTION 6.06. Capacity in Which Acting. The Indenture Trustee acts hereunder solely as trustee as herein provided, and the Owner Trustee acts hereunder solely as trustee as in the Trust Agreement provided, and, in each case, not in its individual capacity, except as otherwise expressly provided herein.

SECTION 6.07. Compensation. The Indenture Trustee shall be entitled to reasonable compensation, including expenses and disbursements, for all services rendered hereunder, which compensation shall be payable pursuant to Section 7.2 of the Participation Agreement and shall have a first priority claim on the Trust Indenture Estate for the payment of such compensation, to the extent that such compensation shall not be paid by the Lessee, and shall have the right to use or apply any moneys held by it hereunder in the Trust Indenture Estate toward such payments. The Indenture Trustee agrees that it shall have no right against any Note Holder or the Owner Participant for any fee as compensation for its services as trustee under this Indenture.

SECTION 6.08. May Become Note Holder. Each of the institutions acting as Owner Trustee and Indenture Trustee hereunder may become a Note Holder and have all rights and benefits of a Note Holder to the same extent as if it were not the institution acting as Owner Trustee or Indenture Trustee, as the case may be.

SECTION 6.09. Further Assurances; Financing Statements. At any time and from time to time, upon the request of the Indenture Trustee or the Lessee or the Owner Participant, the Owner Trustee shall, at the expense of the Lessee, promptly and duly execute and deliver any and all such further instruments and documents including, without limitation, chattel paper originals of subsequent leases, as may be specified in such request and as are necessary or desirable to perfect, preserve or protect the mortgage, security interests and assignments created or intended to be created hereby, or to obtain for the Indenture Trustee the full benefit of the specific rights and powers herein granted, including, without limitation, the execution and delivery of Uniform Commercial Code financing statements and continuation statements with respect thereto, or similar instruments relating to the perfection of the mortgage, security interests or assignments created or intended to be created hereby.

SECTION 6.10. Certain Rights of Owner Trustee, Owner Participant and Indenture Trustee. Notwithstanding any other provisions of this Indenture, including the Granting Clause, the following rights shall be reserved to the Owner Trustee or Owner Participant, as the case may be, (as separate and independent rights) to the extent described herein:

(a) at all times the Owner Trustee shall have the right, together with the Indenture Trustee, (i) to receive from the Lessee (and to make requests to the Lessee for) all notices, certificates, reports, filings, opinions of counsel and other documents and all information

which any thereof is permitted or required to give or furnish to the Owner Trustee or the Lessor pursuant to any Operative Document (including pursuant to Section 6.1 of the Participation Agreement); (ii) to exercise inspection rights pursuant to Section 9 of the Lease, (iii) to retain all rights with respect to insurance maintained for its own account which Section 8.1(vi) of the Lease specifically confers on the Lessor, (iv) to exercise, to the extent necessary to enable it to exercise its rights under Section 4.03 hereof, the rights of the Lessor under Section 19 of the Lease and (v) to exercise all rights of Owner Trustee under Section 7 of the Lease;

(b) until and for so long as the Indenture Trustee shall not have received a request in accordance with the first sentence of Section 5.02(b) hereof to commence the exercise of remedies, or the unpaid principal amount of all Secured Notes shall not have been declared or deemed to have been declared to be immediately due and payable, the Owner Trustee shall have the right (1) to the exclusion of the Indenture Trustee (i) to exercise all rights of the Lessor upon the return of the Equipment under Section 17 of the Lease, (ii) to exercise all rights of the Lessor under Section 16 of the Lease with respect to the retention by the Lessee of the Equipment or the exercise by the Lessee of the Lessee's renewal and purchase options and in respect of the solicitations of bids under Section 26 of the Lease and (iii) subject to the limitations contained in clause (v) of Section 16 of the Participation Agreement, to exercise the rights, elections and options of the Lessor to make any decision or determination and to give any notice, consent, waiver or approval with respect to any adjustments of Rent, Termination Value and Casualty Value under Section 4.3 of the Lease or Section 16 of the Participation Agreement and (2) together with the Indenture Trustee, (i) to exercise all rights of the Lessor with respect to the Lessee's use and operation, modification or maintenance of the Equipment, (ii) to approve as satisfactory any other accountants, engineers or counsel to render services for or issue opinions to the Owner Trustee pursuant to express provisions of the Operative Documents, (iii) to consent to and approve any assignment pursuant to Section 15.1 of the Lease, and (iv) to grant any consent requested under the Lease or the Participation Agreement;

(c) the Owner Trustee shall have the non-exclusive right, as Lessor, (i) to seek specific performance of the covenants of the Lessee under the Lease relating to the protection, insurance, maintenance, possession and use of the Equipment, (ii) to maintain separate insurance with respect to the Equipment pursuant to Section 8.1(vi) of the Lease, and (iii) to request further assurances pursuant to Section 16 of the Lease; and

(d) at all times, each of the Owner Trustee (as Owner Trustee, in its individual capacity and as Lessor) and the Owner Participant shall have the right, to the exclusion of the Indenture Trustee, (i) to exercise any election or option or make any decision or determination or to give or receive any notice, consent, waiver or approval in respect of any Excluded Payment or (ii) to demand, collect, sue for or otherwise receive and enforce the payment of Excluded Payments due and payable to it.

Notwithstanding the foregoing, but subject always to the provisions of Section 10.05 hereof, the Indenture Trustee shall at all times have the right, to the exclusion of the Owner Trustee and the Owner Participant, to (A) declare the Lease to be in default under Section 13.2 thereof and (B)

subject only to the provisions of Sections 4.03 and 4.04(a) hereof, exercise the remedies set forth in such Section 13.2 (other than in connection with Excluded Payments) and in Article IV hereof.

ARTICLE VII

INDEMNIFICATION OF INDENTURE TRUSTEE BY OWNER TRUSTEE

SECTION 7.01. Scope of Indemnification. The Owner Trustee, not individually but solely in its capacity as Owner Trustee under the Trust Agreement, hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and does hereby indemnify, protect, save and keep harmless the Indenture Trustee, in its individual capacity, and its successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, taxes (excluding any taxes payable by the Indenture Trustee on or measured by and compensation received by the Indenture Trustee for its services under this Indenture), claims, actions, suits, costs, expenses or disbursements (including reasonable legal fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Indenture Trustee in its individual capacity (whether or not also agreed to be indemnified against by any other person under any other document) in any way relating to or arising out of this Indenture, the Trust Agreement, the Secured Notes, the Indenture Documents or the enforcement of any of the terms of any thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, non-acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of the Equipment (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of the administration of the Trust Indenture Estate or the action or inaction of the Indenture Trustee hereunder, except only (i) in the case of willful misconduct or gross negligence (or simple negligence in connection with the handling of funds) of the Indenture Trustee in the performance of its duties hereunder or (ii) as may result from the inaccuracy of any representation or warranty of the Indenture Trustee in Section 4.2(iv) of the Participation Agreement or (iii) as otherwise provided in Section 2.06 and the last sentence of Section 5.04 hereof or (iv) as otherwise excluded by the terms of Section 6.1 or Section 6.2 of the Participation Agreement from the Lessee's general tax indemnity and general indemnity under said Sections; provided that the indemnification provided under this Section 7.01 shall not extend to any matter (other than any matter relating to or resulting from an act or omission of the Owner Participant) not indemnified by the Lessee under Section 6.1 or 6.2 of the Participation Agreement and so long as the Lease is in effect, the Indenture Trustee, unless otherwise prohibited by law, shall not make any claim under this Section 7.01 for any claim or expense without first making demand on the Lessee for payment of such claim or expense pursuant to Section 6.1 or 6.2 of the Participation Agreement, as the case may be. The Indenture Trustee in its individual capacity shall be entitled to indemnification from the Trust Indenture Estate for any liability, obligation, loss, damage, penalty, claim, action, suit, cost, expense or disbursement indemnified against pursuant to this Section 7.01 to the extent not reimbursed by the Lessee or others, but without releasing any of them from their respective agreements of reimbursement; and to secure the same the Indenture Trustee shall have a prior Lien on the Trust Indenture

Estate. The indemnities contained in this Section 7.01 shall survive the termination of this Indenture.

ARTICLE VIII

SUCCESSOR TRUSTEES AND SEPARATE TRUSTEES

SECTION 8.01. Notice of Successor Owner Trustee. In the case of any appointment of a successor to the Owner Trustee pursuant to the Trust Agreement or any merger, conversion, consolidation or sale of substantially all of the corporate trust business of the Owner Trustee pursuant to the Trust Agreement, the successor Owner Trustee shall give prompt written notice thereof to the Indenture Trustee and to each Note Holder.

SECTION 8.02. Resignation of Indenture Trustee; Appointment of Successor. (a) The Indenture Trustee or any successor thereto may resign at any time without cause by giving at least 30 calendar days' prior written notice to the Owner Trustee, each Note Holder and the Lessee, such resignation to be effective upon the acceptance of the trusteeship by a successor Indenture Trustee. In addition, a Majority in Interest of Note Holders may at any time remove the Indenture Trustee without cause by an instrument in writing delivered to the Owner Trustee, the Lessee and the Indenture Trustee, and the Owner Trustee shall promptly notify the Owner Participant thereof in writing, such removal to be effective upon the acceptance of the trusteeship by a successor Indenture Trustee. In the case of the resignation or removal of the Indenture Trustee, a Majority in Interest of Note Holders may appoint a successor Indenture Trustee by an instrument signed by such Holders, subject to the reasonable approval of the Lessee so long as no Default or Event of Default has occurred and is continuing. If a successor Indenture Trustee shall not have been appointed within 30 calendar days after such notice of resignation or removal, the Indenture Trustee, the Owner Trustee or any Note Holder may apply to any court of competent jurisdiction to appoint a successor Indenture Trustee to act until such time, if any, as a successor shall have been appointed as above provided. The successor Indenture Trustee so appointed by such court shall immediately and without further act be superseded by any successor Indenture Trustee appointed as above provided within one year from the date of the appointment by such court.

(b) Any successor Indenture Trustee, however appointed, shall execute and deliver to the Owner Trustee and to the predecessor Indenture Trustee an instrument accepting such appointment, and thereupon such successor Indenture Trustee, without further act, shall become vested with all the estates, properties, rights, powers and duties of the predecessor Indenture Trustee hereunder in the trusts hereunder applicable to it with like effect as if originally named the Indenture Trustee herein; but nevertheless upon the written request of such successor Indenture Trustee, such predecessor Indenture Trustee shall execute and deliver an instrument transferring to such successor Indenture Trustee, upon the trusts herein expressed applicable to it, all the estates, properties, rights and powers of such predecessor Indenture Trustee, and such predecessor Indenture Trustee shall duly assign, transfer, deliver and pay over to such successor

Indenture Trustee all moneys or other property then held by such predecessor Indenture Trustee hereunder.

(c) Any successor Indenture Trustee, however appointed, shall be a bank or trust company having a combined capital and surplus of at least \$100,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Indenture Trustee hereunder upon reasonable or customary terms.

(d) Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Indenture Trustee may be transferred, shall, subject to the terms of paragraph (c) of this Section, be the Indenture Trustee under this Indenture without further act.

SECTION 8.03. Appointment of Additional and Separate Trustees.

(a) Whenever (i) the Indenture Trustee shall deem it necessary or prudent in order to conform to any law of any jurisdiction in which all or any part of the Indentured Property shall be situated or to make any claim or bring any suit with respect to or in connection with the Indentured Property, this Indenture, any other Operative Document, the Secured Notes or any of the transactions contemplated by the Participation Agreement or (ii) the Indenture Trustee shall be advised by counsel satisfactory to it that it is so necessary or prudent in the interests of the Note Holders, the Indenture Trustee and the Owner Trustee shall execute and deliver an indenture supplemental hereto and such other instruments as may from time to time be necessary or advisable either (1) to constitute one or more bank or trust companies or one or more natural persons approved by the Indenture Trustee, either to act jointly with the Indenture Trustee as additional trustee or trustees of all or any part of the Indentured Property, or to act as separate trustee or trustees of all or any part of the Indentured Property, in each case with such rights, powers, duties and obligations as may be provided in such supplemental indenture or other instruments as the Indenture Trustee or a Majority in Interest of Note Holders may deem necessary or advisable, or (2) to clarify, add to or subtract from the rights, powers, duties and obligations theretofore granted any such additional or separate trustee, subject in each case to the remaining provisions of this Section 8.03. If the Owner Trustee shall not have taken any action requested of it under this Section 8.03(a) that is permitted or required by its terms within 15 days after the receipt of a written request from the Indenture Trustee so to do, or if an Event of Default shall have occurred and be continuing, the Indenture Trustee may act under the foregoing provisions of this Section 8.03(a) without the concurrence of the Owner Trustee; and the Owner Trustee hereby appoints the Indenture Trustee its agent and attorney-in-fact to act for it under the foregoing provisions of this Section 8.03(a) in either of such contingencies. The Indenture Trustee may, in such capacity execute, deliver and perform any such supplemental indenture, or any such instrument, as may be required for the appointment of any such additional or separate trustee or for the clarification of, addition to or subtraction from the rights, powers, duties or obligations theretofore granted to any such additional or separate trustee. In case any additional or separate trustee appointed under this Section 8.03(a) shall die, become incapable or acting, resign or be removed, all the assets, property, rights, powers, trusts, duties and obligations of

such additional or separate trustee shall revert to the Indenture Trustee until a successor additional or separate trustee is appointed as provided in this Section 8.03(a).

(b) No additional or separate trustee shall be entitled to exercise any of the rights, powers, duties and obligations conferred upon the Indenture Trustee in respect of the custody, investment and payment of monies and all monies received by any such additional or separate trustee from or constituting part of the Indentured Property or otherwise payable under any Operative Document to the Indenture Trustee shall be promptly paid over by it to the Indenture Trustee. All other rights, powers, duties and obligations conferred or imposed upon any additional or separate trustee shall be exercised or performed by the Indenture Trustee and such additional or separate trustee jointly except to the extent that applicable law of any jurisdiction in which any particular act is to be performed renders the Indenture Trustee incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations (including the holding of title to all or part of the Indentured Property in any such jurisdiction) shall be exercised and performed by such additional or separate trustee. No additional or separate trustee shall take any discretionary action except on the instructions of the Indenture Trustee or a Majority in Interest of Note Holders. No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder, except that the Indenture Trustee shall be liable for the consequences of its lack of reasonable care in selecting any additional or separate trustee which is a natural person. Each additional or separate trustee appointed pursuant to this Section 8.03 shall be subject to, and shall have the benefit of Articles IV through VIII and Article X hereof insofar as they apply to the Indenture Trustee. The powers of any additional or separate trustee appointed pursuant to this Section 8.03 shall not in any case exceed those of the Indenture Trustee hereunder.

(c) If at any time the Indenture Trustee shall deem it no longer necessary or prudent in order to conform to any such law or take any such action or shall be advised by such counsel that it is no longer so necessary or prudent in the interest of the Note Holders, or in the event that the Indenture Trustee shall have been requested to do so in writing by a Majority in Interest of Note Holders, the Indenture Trustee and the Owner Trustee shall execute and deliver an indenture supplemental hereto and all other instruments and agreements necessary or proper to remove any additional or separate trustee. The Indenture Trustee may act on behalf of the Owner Trustee under this Section 8.03(c) when and to the extent it could so act under Section 8.03(a).

ARTICLE IX

SUPPLEMENTS AND AMENDMENTS TO THIS INDENTURE AND OTHER DOCUMENTS

SECTION 9.01. **Instructions of Majority; Limitations.** Subject to the provisions of the Participation Agreement, at any time and from time to time, (i) the Indenture Trustee (but only on the written request of a Majority in Interest of Note Holders) shall execute a supplement hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Indenture as specified in such request and (ii) the Indenture Trustee (but only on the

written request of a Majority in Interest of Note Holders) shall enter into such written amendment or supplement to any Indenture Document as may be specified in such request; provided, that, without the consent of each Note Holder, no such amendment of or supplement to any Indenture Document, and no waiver or modification of the terms of any thereof, shall (1) modify any of the provisions of this Section 9.01, the provisions of Section 4.04(e), the provisions of Section 4.1(iii) of the Lease, the provisions of Section 9.6 of the Participation Agreement, the provisions of the second sentence of Section 16(v) of the Participation Agreement, or the definitions of the terms "Default", "Event of Default", "Excluded Payments", "Indenture Documents", "Lease Default", "Lease Event of Default", "Equipment Cost", "Majority in Interest of Note Holders", "Operative Documents", "Permissible Loan Participant", "Permitted Loan Participant", "Qualifying Jurisdiction", "Special Purchase Price", "Termination Value" or "Casualty Value" contained herein or in any other Indenture Document (except to change default definitions by providing for additional events of default), (2) reduce the amount or extend the time of payment of any amount owing or payable under any Secured Note or reduce the interest payable on any Secured Note (except that only the consent of the Note Holder shall be required for any decrease in any amounts of or the rate of interest payable on such Secured Note or any extension for the time of payment of any amount payable under such Secured Note), or alter or modify the provisions of Article III hereof with respect to the order of priorities in which distributions thereunder shall be made as between the Note Holders and the Owner Trustee or the Owner Participant or with respect to the amount or time of payment of any such distribution, (3) reduce, modify or amend any indemnities in favor of the Loan Participants or any Note Holder (except as consented to by each Person adversely affected thereby), (4) reduce the amount or extend the time of payment of Rent, Special Purchase Price, Termination Value or Casualty Value (or other amounts payable therewith) for the Equipment as set forth in the Lease (except that Rent may be adjusted as contemplated by Section 16 of the Participation Agreement to match any action consented to by each of the Note Holders referred to in the parenthetical phrase in clause (2) above), (5) modify, amend or supplement the Lease or consent to any assignment of the Lease, in either case releasing the Lessee from its obligations in respect of the payment of Rent (except as above provided), Special Purchase Price, Termination Value or Casualty Value (or other amounts payable therewith) for the Equipment or altering the absolute and unconditional character of such obligations as set forth in Section 5 of the Lease or change any of the circumstances under which , Special Purchase Price, Termination Value or Casualty Value (or other amounts payable therewith) is payable or (6) reduce the term of the Lease. This Section 9.01 shall not apply to any indenture or indentures supplemental hereto permitted by, and complying with the terms of, Section 9.04 hereof. Notwithstanding the foregoing, without the consent of each Note Holder, no such supplement to this Indenture, or waiver or modification of the terms hereof or of any other agreement or document shall permit the creation of any Lien on the Trust Indenture Estate or any part thereof, except as herein expressly permitted, or deprive any Note Holder of the benefit of the Lien of this Indenture on the Trust Indenture Estate, except as provided in Sections 5.01 and 5.02 hereof or in connection with the exercise of remedies under Article IV hereof. The Owner Trustee and the Indenture Trustee each agrees it shall not enter into any written amendment of or supplement to the Lease, or execute and deliver any written waiver or modification of, or consent under, the terms of the Lease, unless such supplement, amendment, waiver, modification or consent is consented to in writing by (x) the Indenture Trustee and (y) unless an Event of Default has occurred and is continuing, the Owner Trustee;

provided that, without the prior consent of the Owner Trustee, and whether or not an Event of Default under this Indenture shall have occurred and be continuing, no such action shall be taken with respect to (A) any of the provisions of Sections 5, 7, 8, 12, 15, 16, 17, 26, 27 or 29 of the Lease or (B) any other section of the Lease to the extent such action shall affect (i) the amount or timing of, or the right to enforce payment of, any Excluded Payment or (ii) the amount or timing of any amounts payable by Lessee under the Lease as originally executed (or as subsequently modified with the consent of the Owner Trustee) which, absent the occurrence and continuance of an Event of Default hereunder would be distributable to the Owner Trustee under Article 3. Anything to the contrary contained herein notwithstanding, without the necessity of the consent of any of the Note Holders or the Indenture Trustee, (i) any indemnities solely in favor of the Owner Participant may be modified, amended, or changed in such manner as shall be agreed to by the Owner Participant and the Lessee, (ii) the Owner Trustee and the Lessee may enter into amendments of or addenda to the Lease to modify Sections 16, 17 or 26 of the Lease or Section 16(v) (other than the second sentence thereof) of the Participation Agreement, so long as such amendments, modifications and changes do not and would not affect the time of, or reduce the amount of, Rent payments (except with respect to Excluded Payments) so long as the Secured Notes are outstanding or otherwise adversely affect the interests of the Note Holders and (iii) the Owner Trustee or the Owner Participant, as the case may be, and the Lessee may enter into any amendment or supplement to (x) the Lease pursuant to Section 16 of the Participation Agreement (including in respect of Section 2.17 hereof) or Section 4.3 of the Lease, or (y) the Tax Indemnity Agreement.

SECTION 9.02. **Trustees Protected.** If, in the opinion of the institution acting as Owner Trustee under the Trust Agreement or the institution acting as Indenture Trustee hereunder, any document required to be executed pursuant to the terms of Section 9.01 hereof materially adversely affects any right, duty, immunity or indemnity with respect to such institution under this Indenture such institution may in its discretion decline to execute such document.

SECTION 9.03. **Documents Mailed to Holders.** Promptly after the execution by the Owner Trustee or the Indenture Trustee of any document entered into pursuant to Section 9.01 hereof, the Owner Trustee shall mail, by certified mail, postage prepaid, a conformed copy thereof to each Note Holder at its address shown on the Note Register maintained by the Indenture Trustee, but the failure of the Owner Trustee to mail such conformed copies shall not impair or affect the validity of such document.

SECTION 9.04. **No Request Necessary for Lease Supplements, Indenture Supplement, etc.** Notwithstanding anything contained in Section 9.01 hereof, no written request or consent of the Indenture Trustee, any Note Holder or the Owner Participant pursuant to Section 9.01 hereof shall be required to enable the Owner Trustee to enter into any Lease Supplements with the Lessee pursuant to the terms of the Lease to subject the Equipment or other property thereto or to execute and deliver a Trust Agreement and Indenture Supplement in connection therewith, in each case pursuant to the terms hereof.

ARTICLE X

MISCELLANEOUS

SECTION 10.01. **Termination of Indenture.** Upon (or at any time after) payment in full of the principal of, interest on, Breakage Amount, if any, and all other amounts due under, all Secured Notes and provided that there shall then be no other amounts due to the Note Holders and the Indenture Trustee hereunder or under the other Operative Documents or otherwise secured hereby, the Owner Trustee shall direct the Indenture Trustee to execute and deliver to or as directed in writing by the Owner Trustee an appropriate instrument releasing the Equipment from the Lien of this Indenture and releasing the Indenture Documents from the assignment and pledge thereof hereunder, and the Indenture Trustee shall execute and deliver such instrument as aforesaid and, at the Owner Trustee's expense, will execute and deliver such other instruments or documents as may be reasonably requested by the Owner Trustee to give effect to such release; provided, however, that this Indenture and the trusts created hereby shall earlier terminate and this Indenture shall be of no further force or effect upon any sale or other final disposition by the Indenture Trustee of all property part of the Trust Indenture Estate and the final distribution by the Indenture Trustee of all moneys or other property or proceeds constituting part of the Trust Indenture Estate in accordance with the terms hereof. Further, upon the prepayment in full of the Secured Notes pursuant to Section 2.12 or 2.14 hereof, and payment of all other sums due and payable thereunder in connection therewith, the Owner Trustee shall direct the Indenture Trustee to execute and deliver to or as directed in writing by the Owner Trustee an appropriate instrument releasing the Equipment from the Lien of this Indenture and releasing the Indenture Documents pertaining solely thereto from the assignment and pledge hereunder, and the Indenture Trustee shall execute and deliver such instruments as aforesaid. Except as aforesaid otherwise provided, this Indenture and the trusts created hereby shall continue in full force and effect in accordance with the terms hereof.

SECTION 10.02. **No Legal Title to Trust Indenture Estate in Holders.** No Note Holder shall have legal title to any part of the Trust Indenture Estate. No transfer, by operation of law or otherwise, of any Secured Note or other right, title and interest of any Note Holder in and to the Trust Indenture Estate or hereunder shall operate to terminate this Indenture or entitle such Note Holder or any successor or transferee of such holder to an accounting or to the transfer to it of legal title to any part of the Trust Indenture Estate.

SECTION 10.03. **Sale of Equipment by Indenture Trustee is Binding.** Any sale or other conveyance of the Equipment or any interest therein by the Indenture Trustee made pursuant to the terms of this Indenture or of the Lease shall bind the Note Holders and shall be effective to transfer or convey all right, title and interest of the Indenture Trustee, the Owner Trustee, the Owner Participant and such holders in and to such Equipment. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Indenture Trustee.

SECTION 10.04. **Indenture for Benefit of Owner Trustee, Indenture Trustee, Owner Participant and Note Holders.** Nothing in this Indenture, whether express or implied, shall be construed to give to any Person other than the Owner Trustee, the Indenture Trustee, the Owner Participant, the Note Holders and (with respect to Sections 2.02, 2.04, 2.12, 2.14, 3.02, 3.05, 3.07, 5.06, 5.07, 9.01, 9.04, 10.01, this 10.04 and 10.05 and any provisions hereof requiring payment to or by the Lessee) the Lessee, any legal or equitable right, remedy or claim under or in respect of this Indenture.

SECTION 10.05. **No Action Contrary to Lessee's Rights Under the Lease.** Notwithstanding any of the provisions of this Indenture to the contrary, including, without limitation, Article IV hereof, so long as no Lease Default shall have occurred and be continuing, the Indenture Trustee agrees for the benefit of the Lessee that it will not take any action contrary to the Lessee's rights under or derived pursuant to the Lease, as the case may be, including, without limitation, the Lessee's rights to possession and use of the Equipment provided for therein.

SECTION 10.06. **Notices.** Unless otherwise expressly specified or permitted by the terms hereof, all notices, requests, demands, authorizations, directions, consents, waivers or documents provided or permitted by this Indenture to be made, given, furnished or filed shall be in writing, mailed by certified mail, postage prepaid, or by confirmed telex, and (i) if to the Owner Trustee, addressed to it at its office at Goodwin Square, 225 Asylum Street, Hartford, Connecticut 06103, Attention: Corporate Trust Administration (Amtrak Trust 97-D), (ii) if to Indenture Trustee, addressed to it at its office at 25 South Charles Street, Baltimore, Maryland 21201, Attention: Corporate Trust Department or (iii) if to any Participant, the Lessee or any Note Holder, addressed to such party at such address as such party shall have furnished by notice to the Owner Trustee and the Indenture Trustee, or, until an address is so furnished, addressed to the address of such party (if any) set forth on Schedule I to the Participation Agreement. Whenever any notice in writing is required to be given by the Owner Trustee or the Indenture Trustee or any Note Holder to any of the other of them, such notice shall be deemed and such requirement satisfied when such notice is received. Any party hereto may change the address to which notices to such party will be sent by giving notice of such change to the other parties to this Indenture. Notwithstanding anything in this Indenture to the contrary, no notice or request shall be required to be delivered to the Owner Trustee, the Owner Trustee (in its individual capacity), the Owner Participant, any Guarantor or the Lessee pursuant to any provision of this Indenture if the Person specified to deliver such notice or request is then stayed or otherwise prohibited by law from delivering such notice or request.

SECTION 10.07. **Severability.** Any provision of this Indenture which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.08. **No Oral Modifications or Continuing Waivers.** No terms or provisions of this Indenture or the Secured Notes may be changed, waived, discharged or

terminated orally, but only by an instrument in writing signed by the party or other person against whom enforcement of the change, waiver, discharge or termination is sought; and any waiver of the terms hereof or of any Secured Note shall be effective only in the specific instance and for the specific purpose given.

SECTION 10.09. **Successors and Assigns.** All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, each of the parties hereto and the successors and permitted assigns of each, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by any Note Holder shall bind the successors and assigns of such Note Holder. This Indenture and the Trust Indenture Estate shall not be affected by any amendment or supplement to the Trust Agreement or by any other action taken under or in respect of the Trust Agreement, except that each reference in this Indenture to the Trust Agreement shall mean the Trust Agreement as amended and supplemented from time to time to the extent permitted hereby and thereby.

SECTION 10.10. **Headings.** The headings of the various Articles and Sections herein and in the table of contents hereto are for the convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 10.11. **Normal Commercial Relations.** Anything contained in this Indenture to the contrary notwithstanding, any Participant or any bank or other Affiliate of such Participant may conduct any banking or other financial transactions, and have banking or other commercial relationships, with the Lessee fully to the same extent as if this Indenture were not in effect, including without limitation the making of loans or other extensions of credit to the Lessee for any purpose whatsoever, whether related to any of the transactions contemplated hereby or otherwise.

SECTION 10.12. **Governing Law; Counterpart Form.** THIS INDENTURE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE WITHOUT REFERENCE TO ANY CONFLICT OF LAW RULES THAT MIGHT LEAD TO APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION. This Indenture may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed by their respective officers thereunto duly authorized, as of the day and year first above written, and acknowledge that this Indenture has been made and delivered in the City of New York, this Indenture having become effective only upon such execution and delivery.

STATE STREET BANK AND TRUST
COMPANY OF CONNECTICUT, NATIONAL
ASSOCIATION,

not in its individual capacity, except as expressly
provided herein, but solely as Owner Trustee

By Susan T. Keller
Name: **SUSAN T. KELLER**
Title: **Vice President**

THE FIRST NATIONAL BANK OF
MARYLAND,
as Indenture Trustee

By _____
Name:
Title:

STATE OF CONNECTICUT)
COUNTY OF HARTFORD) ss.:

On this 22nd day of December, 1997 before me personally appeared Susan T. Keller, to me personally known, who, being by me duly sworn, says that he/she is the Vice President of STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, that said instrument was signed on behalf of said Delaware banking corporation by authority of its Board of Directors, and he/she acknowledges that the execution of the foregoing instrument was the free act and deed of said banking corporation.

Notary Public



My Commission Expires:

KAREN R. FELT
NOTARY PUBLIC
My Commission Expires 02/28/99

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed by their respective officers thereunto duly authorized, as of the day and year first above written, and acknowledge that this Indenture has been made and delivered in the City of New York, this Indenture having become effective only upon such execution and delivery.

STATE STREET BANK AND TRUST
COMPANY OF CONNECTICUT, NATIONAL
ASSOCIATION,

not in its individual capacity, except as expressly
provided herein, but solely as Owner Trustee

By _____

Name:


Title:

THE FIRST NATIONAL BANK OF
MARYLAND,
as Indenture Trustee

By _____

Name:

Title:

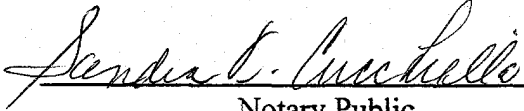


Robert D. Brown

Assistant Vice President

STATE OF MARYLAND)
) ss.:
COUNTY OF BALTIMORE)

On this 29th day of December, 1997, before me personally appeared Robert D. Brown, to me personally known, who, by me being duly sworn, says that he/she is Assistant Vice President of THE FIRST NATIONAL BANK OF MARYLAND, and that the foregoing instrument was signed on behalf of said national banking association by authority of its board of directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said association.



Notary Public

My commission expires

5/19/98

SCHEDULE I

Amortization Schedule

Installment Payment Date*

**Percent of Original
Principal Amount to be Paid**

* "Installment Payment Date" has the meaning specified in Annex A to the Participation Agreement.

EXHIBIT A
to Trust Indenture and Security Agreement

TRUST AGREEMENT AND INDENTURE SUPPLEMENT NO. _____
(Amtrak Trust 97-D)

TRUST AGREEMENT AND INDENTURE SUPPLEMENT No. _____ (Amtrak Trust 97-D) dated _____, 1997 of STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, not in its individual capacity but solely as owner trustee (herein called the "Owner Trustee") under the Trust Agreement (Amtrak Trust 97-D) dated as of December 1, 1997 (herein called the "Trust Agreement"), between the Owner Trustee and the Owner Participant named therein.

WITNESSETH:

WHEREAS, the Trust Agreement provides for the execution and delivery of one or more Supplements thereto, which shall particularly describe the Equipment and any Replacement Unit(s) included in the property covered by the Trust Agreement.

WHEREAS, the Trust Indenture and Security Agreement (Amtrak Trust 97-D) dated as of December 1, 1997 (herein called the "Indenture") between the Owner Trustee and The First National Bank of Maryland, as Indenture Trustee (herein called the "Indenture Trustee"), provides for the execution and delivery of a supplement thereto substantially in the form hereof which shall particularly describe the Equipment (such term and other defined terms in the Indenture being herein used with the same meanings) and any Replacement Unit(s) included in the Trust Indenture Estate, and shall specifically mortgage such Equipment or Replacement Unit(s) to the Indenture Trustee.

WHEREAS*, the Indenture relates to the Unit(s) described below and a counterpart of the Indenture is attached hereto and made a part hereof.

WHEREAS, a redacted version of the Trust Indenture and Security Agreement (Amtrak Trust 97-D) has been filed with the Surface Transportation Board pursuant to 49 U.S.C. §11301 on December ____, 1997 at __:__.m. Recordation Number ____, and deposited in the office of the Registrar General of Canada pursuant to the Transportation Act of Canada on December ____, 1997 at __:__.m.

WHEREAS*, the Owner Trustee has, as provided in the Indenture, heretofore executed and delivered to the Indenture Trustee Trust Agreement and Indenture Supplement(s) for the purpose of specifically subjecting to the Lien of the Indenture certain one or more unit(s) therein described, which Trust Agreement and Indenture Supplement(s) is [are] dated and has

* This recital is to be included only in the first Trust Agreement and Indenture Supplement.

[have] been duly filed with the Surface Transportation Board pursuant to 49 U.S.C. §11301 on December __, 1997 at __: __.m. Recordation Number ____, and deposited in the office of the Registrar General of Canada pursuant to the Transportation Act of Canada on December __, 1997 at __: __.m.

NOW, THEREFORE, This Supplement Witnesseth that, to secure the prompt payment of the principal of and Breakage Amount, if any, and interest on, and all other amounts due with respect to, all Secured Notes from time to time outstanding under the Indenture and the performance and observance by the Owner Trustee of all the agreements, covenants and provisions in the Indenture and in the Participation Agreement and the other Operative Documents for the benefit of the Note Holders and the Loan Participants and in the Secured Notes contained, and the prompt payment of all amounts from time to time owing under the Participation Agreement and the other Operative Documents by the Owner Trustee and the Lessee, in each case, to the Loan Participants and/or the Note Holders, and for the uses and purposes and subject to the terms and provisions of the Indenture, and in consideration of the premises and of the covenants contained in the Indenture, and of the acceptance of the Secured Notes by the holders thereof, and of the sum of \$1 paid to the Owner Trustee by the Indenture Trustee at or before the delivery hereof, the receipt whereof is hereby acknowledged, the Owner Trustee has granted, bargained, sold, assigned, transferred, conveyed, mortgaged, pledged and confirmed, and does hereby grant, bargain, sell, assign, transfer, convey, mortgage, pledge and confirm, unto the Indenture Trustee, its successors and assigns, for the security and benefit of the Loan Participants and the Note Holders from time to time, in the trust created by the Indenture, a security interest in and mortgage Lien on all estate, right, title and interest of the Owner Trustee in, to and under the following described property:

EQUIPMENT

identified as follows:

<u>Description</u>	<u>Amtrak Equipment Numbers</u>
Fifty (50) Amerail Vicwliner Passenger Cars	___ through ___, inclusive

Together with all substitutions, replacements and renewals of the property above described, and all property which shall hereafter become physically attached to or incorporated in the property above described, whether the same are now owned by the Owner Trustee or shall hereafter be acquired by it.

As further security for the obligations referred to above and secured by the Indenture and hereby, the Owner Trustee has granted, bargained, sold, assigned, transferred, conveyed, mortgaged, pledged and confirmed, and does hereby grant, bargain, sell, assign, transfer, convey, mortgage, pledge and confirm, unto the Indenture Trustee, its successors and assigns, for the security and benefit of the Loan Participants and the Note Holders from time to time, in the trust created by the Indenture, all of the estate, right, title and interest of the Owner

Trustee in to and under the Lease Supplement No. ____ of even date herewith (other than Excluded Payments, if any) covering the property described above.

TO HAVE AND TO HOLD all and singular the aforesaid property unto the Indenture Trustee, its successors and assigns, for the benefit and security of the Loan Participants and the Note Holders from time to time for the uses and purposes and subject to the terms and provisions set forth in the Indenture.

This Supplement shall be construed as supplemental to the Indenture and to the Trust Agreement and shall form a part of each, and the Trust Agreement and the Indenture are each hereby incorporated by reference herein and each is hereby ratified, approved and confirmed.

This Supplement is being delivered in the State of New York.

AND, FURTHER, the Owner Trustee hereby acknowledges that the Equipment referred to in this Supplement and the aforesaid Lease Supplement have been delivered to the Owner Trustee and is included in the property of the Owner Trustee covered by all the terms and conditions of the Trust Agreement, Subject to the pledge and mortgage thereof under the Indenture.

DEC 30 1991 10:21 FILED BY XXXX.LTR 2123573260 11/18/13

IN WITNESS WHEREOF, the Owner Trustee has caused this Supplement to be duly executed by one of its officers thereunto duly authorized on the day and year first above written.

STATE STREET BANK AND TRUST
COMPANY OF CONNECTICUT, NATIONAL
ASSOCIATION,
not in its individual capacity, except as expressly
provided herein, but solely as Owner Trustee

By _____
Name:
Title:

EXHIBIT B
to
Trust Indenture and Security Agreement

TAX CERTIFICATE

Reference is made to the Secured Note(s) held by the undersigned pursuant to the Trust Indenture and Security Agreement (Amtrak Trust 97-D) dated as of December 1, 1997 between State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity except as expressly provided therein, but solely as Owner Trustee (the "Lessor"), and The First National Bank of Maryland, as Indenture Trustee. The undersigned hereby declares under the penalties of perjury that:

- (1) the undersigned is the beneficial owner of the Secured Note(s) registered in its name;
- (2) the income from the Secured Note(s) held by the undersigned is not effectively connected with the conduct of a trade or business within the United States;
- (3) the undersigned is not a bank (as such term is used in I.R.C. Section 881(c)(3)(A));
- (4) the undersigned is not a controlled foreign corporation related (within the meaning of I.R.C. Section 864(d) (4)) to the Lessor or the Owner Participant;
- (5) the undersigned is not a 10% shareholder (within the meaning of I.R.C. Section 871(h)(3)(B)) of the Lessor or the Owner Participant;
- (6) the undersigned is a Person other than (i) a citizen or resident of the United States of America, its territories and possessions (including the Commonwealth of Puerto Rico and all other areas subject to its jurisdiction) (for purposes of this definition, the "United States"), (ii) a corporation, partnership or other entity created or organized under the laws of the United States or any political subdivision thereof or therein or (iii) an estate or trust that is subject to United States federal income taxation regardless of the source of its income; and
- (7) the undersigned is not a natural person.

By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall so inform the Indenture Trustee in writing within thirty days of such change and (2) the undersigned shall furnish the Indenture Trustee a properly completed and currently effective certificate in either the calendar year in

which payment is to be made by the Indenture Trustee to the undersigned, or in either of the two calendar years preceding such payment.

[NAME]

By: _____
[Address]

Dated:

EXHIBIT C
to
Trust Indenture and Security Agreement

[FORM OF SECURED NOTE]

THIS SECURED NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE SUCH A REGISTRATION IS IN EFFECT OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT

STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT,
NATIONAL ASSOCIATION,
not in its individual
capacity but solely as
OWNER TRUSTEE UNDER TRUST AGREEMENT (Amtrak Trust 97-D)
DATED AS OF December 1, 1997

SECURED NOTE DUE _____

ISSUED IN CONNECTION WITH
FIFTY (50) AMERAIL VIEWLINER PASSENGER CARS

No. _____
\$ _____

New York, New York
December __, 1997

STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, not in its individual capacity but solely as Owner Trustee (herein in such capacity called the "Owner Trustee") under that certain Trust Agreement (Amtrak Trust 97-D) dated as of December 1, 1997 between the Owner Participant named therein and State Street Bank and Trust Company of Connecticut, National Association (in its individual capacity only as expressly stated in the Trust Agreement and otherwise solely as Owner Trustee under the Trust Agreement) (herein as such Trust Agreement may be amended or otherwise modified from time to time called the "Trust Agreement"), hereby promises to pay to _____ or registered assigns, the principal sum of _____ Dollars, on each Installment Payment Date set forth in Annex A hereto, each such installment on any Installment Payment Date to be in an amount equal to the

amount set forth in Annex A hereto opposite such Installment Payment Date, together with interest at the Applicable Rate on the unpaid principal amount hereof from time to time outstanding from and including the date hereof until such principal amount is paid in full; provided, however, that the final principal payment hereon shall in any and all events equal the then outstanding principal balance hereof. Accrued interest hereon shall be payable in arrears on each Installment Payment Date and on the date this Secured Note is paid in full. Notwithstanding the foregoing, this Secured Note shall bear interest at the Overdue Rate on any principal hereof and, to the extent permitted by applicable law, on any interest or other amounts due hereunder, not paid when due (whether at stated maturity, by acceleration or otherwise), payable on demand by the holder hereof.

All payments to be made to the holder hereof by the Owner Trustee hereunder or under the Trust Indenture and Security Agreement (Amtrak Trust 97-D) dated as of December 1, 1997 (herein called the "Indenture", the defined terms therein not otherwise defined herein being used herein with the same meanings) between the Owner Trustee and The First National Bank of Maryland, as Indenture Trustee thereunder, shall be made only from the income and proceeds from the Trust Estate to the extent included in the Trust Indenture Estate and only to the extent that the Owner Trustee shall have sufficient income or proceeds from the Trust Indenture Estate to enable the Indenture Trustee to make such payments in accordance with the terms of the Indenture, and each holder hereof, by its acceptance of this Secured Note, agrees that it will look solely to the income and proceeds from the Trust Indenture Estate to the extent available for distribution to the holder hereof as above provided and that none of the Owner Participant, the Owner Trustee or the Indenture Trustee is personally liable to the holder hereof for any amounts payable under this Secured Note or under the Indenture, except as expressly provided in the Indenture (in the case of the Owner Trustee and the Indenture Trustee) or in the Participation Agreement (in the case of the Owner Participant, the Owner Trustee and the Indenture Trustee).

The Owner Trustee agrees to pay over to the Indenture Trustee for distribution in accordance with Section 3.04(b) of the Indenture any and all amounts received by the Owner Trustee in respect of indemnity amounts paid by the Lessee in respect of the holder of this Secured Note pursuant to Sections 6.1 and 6.2 of the Participation Agreement or by a Guarantor in respect of such obligations and further agrees that such obligation incurred by it in this paragraph shall be secured by the Indenture.

Principal, Breakage Amount, if any, and interest and other amounts due hereunder shall be payable in Dollars in immediately available funds on the due date thereof to the Indenture Trustee at the Corporate Trust Office, ABA No. 052-000-113, Credit Trust Receipt A/C # 090-0276-4, Attention: Corporate Trust Department (or such other account at such other financial institution in New York City or Baltimore, Maryland as the Indenture Trustee may so specify from time to time to the Owner Trustee and the Lessee) and the Indenture Trustee shall remit all such amounts so received by it to such address and in such manner (by wire transfer of immediately available funds if not otherwise specified) as the holder hereof shall have designated to the Indenture Trustee in writing. If the payment was received prior to 1:00 P.M. New York time by the Indenture Trustee on any Business Day, the Indenture Trustee shall make such payment by 3:00 P.M. New York time on such Business Day; otherwise, the Indenture Trustee

shall make payment promptly, but not later than 11:00 A.M. New York time the next succeeding Business Day. In the event the Indenture Trustee shall fail to make any such payment as provided in the immediately foregoing sentence after its receipt of funds at the place and by the time specified above, the Indenture Trustee, in its individual capacity and not as trustee, hereby agrees to compensate the holder of this Secured Note at an interest rate equal to the Prime Rate for the period from the date such amount is due to, but excluding, the date such amount is paid in full. If any sum payable hereunder falls due on a day which is not a Business Day, then such sum shall be payable on the next succeeding Business Day and no interest shall accrue on the amount of such payment if such payment is made on such next succeeding Business Day.

The obligations of the Owner Trustee payable hereunder are payable in Dollars.

Each holder hereof, by its acceptance of this Secured Note, agrees that each payment of principal and interest or other amounts due hereon and received by it hereunder shall be applied, first, to the payment of interest on this Secured Note due and payable to the date of such payment as hereinabove provided, as well as any interest on overdue principal or, to the extent permitted by law, interest and other amounts hereunder, second, to the payment of any other amount (other than the principal of this Secured Note) including, but not limited to, Breakage Amount, if any, due hereunder, third, to the payment of the principal of this Secured Note then due hereunder and fourth, the balance, if any, remaining thereafter, to the payment of the principal of this Secured Note remaining unpaid, in the manner set forth in the second sentence of Section 2.07 of the Indenture, but subject always to the proviso set forth in the first sentence of said Section 2.07.

This Secured Note is one of the Secured Notes referred to in the Indenture which have been or are to be issued by the Owner Trustee pursuant to the terms of the Indenture. The Trust Indenture Estate is held by the Indenture Trustee as security, in part, for the Secured Notes. The beneficial interest of the Owner Participant in and to the properties of the Owner Trustee pledged or mortgaged as part of the Trust Indenture Estate is subject and subordinate to the lien and security interest granted to the Indenture Trustee to the extent provided in the Indenture. Reference is hereby made to the Indenture for a statement of the rights and obligations of the holder of, and the nature and extent of the security for, this Secured Note and of the rights and obligations of the holders of, and the nature and extent of the security for, the other Secured Notes, as well as for a statement of the terms and conditions of the trusts created by the Indenture, to all of which terms and conditions in the Indenture each holder hereof agrees by its acceptance of this Secured Note.

There shall be maintained a Note Register for the purpose of registering transfers and exchanges of Secured Notes at the Corporate Trust Office of the Indenture Trustee or at the office of any successor indenture trustee in the manner provided in Section 2.09 of the Indenture. As provided in the Indenture and subject to certain limitations therein set forth, the Secured Notes are exchangeable for a like aggregate principal amount of Secured Notes of a different authorized denomination, as requested by the Note Holder surrendering the same.

Prior to the due presentment for registration of transfer of this Secured Note, the Owner Trustee and the Indenture Trustee may deem and treat the Person in whose name this Secured Note is registered on the Note Register as the absolute owner and holder hereof for the purpose of receiving payment of all amounts payable with respect hereto and for all other purposes, and neither the Owner Trustee, the Indenture Trustee nor the Lessee, shall be affected by any notice to the contrary.

This Secured Note is subject to prepayment only as permitted by Sections 2.12 and 2.14 of the Indenture and to purchase as provided in Sections 2.04 and 2.13 of the Indenture, and the holder hereof, by its acceptance of this Secured Note, agrees to be bound by said provisions and by the other provisions of the Indenture and of the Participation Agreement applicable to a Loan Participant or Note Holder.

THIS SECURED NOTE IS SUBJECT TO CERTAIN ADDITIONAL RESTRICTIONS ON TRANSFER ARISING OUT OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED. THESE RESTRICTIONS ARE SET FORTH IN SECTIONS 4.2(i)(b) AND 10.2 OF THE PARTICIPATION AGREEMENT.

This Secured Note shall not be secured by or be entitled to any benefit under the Indenture or be valid or obligatory for any purpose, unless authenticated by the Indenture Trustee as evidenced by the manual signature of one of its authorized officers below.

THIS SECURED NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

IN WITNESS WHEREOF, the Owner Trustee has caused this Secured Note to be executed in its corporate name by its officer thereunto duly authorized, as of the date hereof.

STATE STREET BANK AND TRUST
COMPANY OF CONNECTICUT, NATIONAL
ASSOCIATION,

not in its individual capacity, except as expressly
provided herein, but solely as Owner Trustee

By _____
Name:
Title:

[FORM OF INDENTURE TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This is one of the Secured Notes referred to in the within-mentioned Indenture.

THE FIRST NATIONAL BANK OF
MARYLAND,
as Indenture Trustee

By _____
Name:
Title:

ANNEX A
to
SECURED NOTE

SCHEDULE OF PRINCIPAL PAYMENTS

Installment Payment Date Occurring On

Principal Amount to be Paid*

•

-
- * The amounts in this column for this Secured Note shall be equal, for any Installment Payment Date, to the product of (a) the "percentage of original principal amount to be paid" for such Installment Payment Date and (b) the original principal amount of this Secured Note.